

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

75-7515

(42338)

United States Court of Appeals

For the Second Circuit

RAUL GONZALEZ,

Plaintiff-Appellee,

against

ALBERT SHANKER, et al.,

Defendants-Appellants.

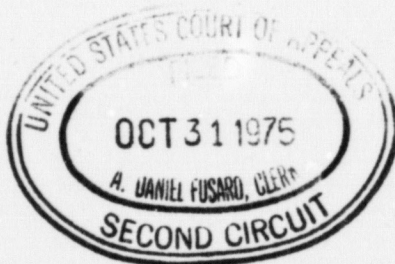
**On Appeal from Judgment and Order of the United States
District Court for the Eastern District of New York**

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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Docket Entries

DATE	NR.	PROCEEDINGS
04-08-75	(1)	Filed complaint and issued summons.
05-01-75	(2)	Filed stip & order that time of certain deft's to answer complaint is ext. to 5-31-75. Knapp, J.
05-20-75	(4)	Filed Defts Carosella, Braverman, Spivack, Shanker, Levine, Fesko, Green & The United Federation of Teachers Affdvt & Notice of motion re: order dismissing complaint Court lacks jurisdiction, ret. 6/27/75, Rm. 1105, 2:00 p.m.
05-07-75	(5)	Filed summons & entered marshal's return served on: <ul style="list-style-type: none"> (1) A. Shanker by S. Perelson 4-9-75 (2) A. Mersereau by P. Mersereau 4-21-75 (3) L. Lurie unexecuted 4-17-75 (4) A. Roher by same 4-30-75 (5) R. Price by S. Price 4-9-75 (6) J. Goodman unexecuted 4-30-75 (7) C. Kozlowsky unexecuted 4-25-75 (8) M. Rubin by Ms. Rubin 4-9-75 (9) K. Carosella by same 4-18-75 (10) G. Sousa by D. Weiss 4-11-75 (11) H. Lasser by D. Weiss 4-11-75 (12) R. Braverman unexecuted 4-28-75

Docket Entries

DATE	NR.	PROCEEDINGS
		(13) L. Spivack by same 4-18-75
		(14) I. Anker by B. Wolf 4-11-75
		(15) J. Monserrat by D. Weiss 4-11-75
		(16) S. Aiello by D. Weiss 4-11-75
		(17) J. Barkan by D. Weiss 4-11-75
		(18) R. Christen by D. Weiss 4-11-75
		(19) A. Ashe by D. Weiss 4-11-75
		(20) J. Regan by D. Weiss 4-11-75
		(21) I. Robinson by D. Weiss 4-11-75
		(22) United Federation of Teachers by S. Perelson 4-9-75
		(23) S. Levine by S. Perelson 4-9-75
		(24) G. Fesko by P. Panton 4-17-75
		(25) M. Green by S. Perelson 4-9-75.
05-22-75	(6)	Filed (26) City Defts Affdvt & Notice of motion to dismiss ret. Rm. 1105, 6/27/75, 2:00 p.m.
05-22-75	(7)	Filed City Defts memorandum in support of motion to dismiss.
05-22-75	(8)	Filed memorandum of U.F.T. deft's in sup- port of motion to dismiss.

Docket Entries

DATE	NR.	PROCEEDINGS
06-24-75	(9)	Filed Addl. Summons with Marshal's Return. Carolyn Kozlowsky—unexc. Jerome Goodman—by nail & mail service on 5/30/75 Carolyn Kozlowsky—by nail & mail service on 5/30/75 Roger Braverman by Mrs. Braverman, 5/16/75 Roger Braverman by nail and mail service 5/16/75 Leonard Lurie by nail and mail—5/19/75
06-25-75	(10)	Filed affidavit of R. Gonzalez in opposition to motion to dismiss.
06-25-75	(11)	Filed plttf's memorandum in opposition to motion to dismiss.
06-01-75	(12)	Filed stip & order that def't's motion to dismiss is adj. from 6-27-75 to 7-10-75. Knapp, J.
07-08-75	(13)	Filed reply memorandum of U.F.T. def't's in support of motion to dismiss.
07-08-75	(14)	Filed reply affidavit of K. Carolsella.
07-09-75	(15)	Filed City def't's reply memorandum of law in support of motion to dismiss.

Docket Entries

DATE	NR.	PROCEEDINGS
08-05-75	(16)	Filed Opinion #42921. Defts motions to dismiss complaint in all respects denied, etc. as indicated. So Ordered. Knapp, J. (mn)
09-11-75	(17)	Filed Bond for costs on appeal in the sum of \$250.00 by Traveiers Indemnity Co.

United States District Court

3

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Gen. det.
JUDGE KNAPP

CIVIL ACTION FILE NO. 75 Civ 1705

RAUL GONZALEZ,

Plaintiff,

- against -

ALBERT SHANKER, ANNE MERSEREAU,
LEONARD LURIE, ADOLPH ROHER,
RICHARD LEE PRICE, JEROME GOODMAN,
CAROLYN KOZLOWSKY, MARTIN RUBIN,
KENNETH CAROSELLA, GARY SOUSA,
HARRY LASSER, ROGER BRAVERMAN,
LORRAINE SPIVACK, IRVING ANKER,
JOSEPH MONSERRAT, STEPHEN AIELLO,
JOSEPH G. BARKAN, ROBERT CHRISTEN,
AMELIA ASHE, JAMES F. REGAN,
ISAIAH ROBINSON, THE UNITED FEDERATION
OF TEACHERS, SOL LEVINE, GEORGE FESKO
and MAX GREEN,

Defendants

SUMMONS

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APR 11 3 21 PM '75
SECRETARY
ECARD OF EDUCATION

To the above named Defendants:

You are hereby summoned and required to serve upon LAYTON and SHERMAN

plaintiff's attorney s, whose address is 50 Rockefeller Plaza,
New York, New York 10020

an answer to the complaint which is herewith served upon you, within 20 days after service of this
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
taken against you for the relief demanded in the complaint.

RAYMOND F. BURNHARDT

Clerk of Court.

E. A. BECKER

Deputy Clerk.

Date: April 4, 1975

[Seal of Court]

C.C.

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Complaint

4

----- X
RAUL GONZALEZ, :
 :
 Plaintiff, :
 :
 - inst - :
 :
 ALBERT SHANKER, ANNE MERSEREAU, :
 LEONARD LURIE, ADOLPH ROHER, :
 RICHARD LEE PRICE, JEROME GOODMAN, :
 CAROLYN KOZLOWSKY, MARTIN RUBIN, :
 KENNETH CAROSELLA, GARY SOUSA, :
 HARRY LASSER, ROGER BRAVERMAN, :
 LORRAINE SPIVACK, IRVING ANKER, :
 JOSEPH MONSERRAT, STEPHEN AIELLO, :
 JOSEPH G. BARKAN, ROBERT CHRISTEN, :
 AMELIA ASHE, JAMES F. REGAN, :
 ISAIAH ROBINSON, THE UNITED FEDERATION :
 OF TEACHERS, SOL LEVINE, GEORGE PESKO :
 and MAX GREEN, :
 :
 Defendants. :
----- X

COMPLAINT

Plaintiff, by his attorneys, LAYTON and SHERMAN, for
his complaint, alleges:

JURISDICTION

1. This action is brought for declaratory judgment,
injunctive relief and damages pursuant to 42 U.S.C. §§1981, 1983,
1985(3) and 1986. Jurisdiction is founded upon 28 U.S.C. §1343
and §2201. The claim arose in the Southern District of New York.

COUNT ONE

2. Plaintiff RAUL GONZALEZ is a United States
citizen of Puerto Rican descent, and has been for the entire
period relevant in this action, a resident of the State of

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SECRETARY
BOARD OF EDUCATION

APR 14 PM 1 55
LAW DEPARTMENT

New York. Plaintiff is employed as Principal of Ottilia M. Beha Junior High School 60M in Manhattan, in Community School District One by the Board of Education of the City of New York, having originally been employed in the capacity of Acting Principal on December 11, 1972. Plaintiff's employment was secured by the Community Board consistent with the bylaws of Community School District One. Plaintiff holds a bachelor's degree in music and a master's degree in music education from the Manhattan School of Music, a master's degree in secondary school educational administration from Columbia University Teacher's College and is there pursuing a doctor's degree in secondary school educational administration. Since February 1, 1973, plaintiff has been a certified School Administrator and Supervisor of the State Education Department of the University of the State of New York and was licensed to serve as Principal in the Junior High Schools of the City of New York on August 8, 1974.

3. Defendant ANNE MERSEREAU was employed by Community School District One as Deputy Community Superintendent between February 26, 1973 and February 26, 1975. Defendant Mersereau was appointed to the position of Acting Superintendent of School District One after the suspension of Superintendent Luis Fuentes by the School Board on August 8, 1974. She was relieved of her duties as Acting Superintendent by the School Board on February 18, 1975. Her contract of employment was not renewed.

4. Defendant LEONARD LURIE was named acting Interim Superintendent of School District One by means of a letter from Adolph Roher, Chairman of the Community Board on February 19, 1975 in a manner apparently inconsistent with the bylaws of the Community School Board, District One. He is acting in this

capacity at present. Defendant Lurie has been an outspoken critic of Luis Fuentes, the suspended Superintendent of School District One, and has been actively and outspokenly associated with the position advocated by the United Federation of Teachers with respect to the governance and administration of Community School District One.

5. Defendants ADOLPH ROHER, RICHARD LEE PRICE, JEROME GOODMAN, CAROLYN KOZLOWSKY and MARTIN RUBIN are members of the Community Board, District One, having been elected to their positions in the Community Board election conducted on May 14, 1974. Defendants Roher, Price, Goodman, Kozlowsky and Rubin are white and ran for Community School Board membership on a slate closely associated with and supported by the United Federation of Teachers ("U.F.T."). Defendant members, through the consistent exercise of their majority power, have dictated the policy and actions of the District One Community Board.

6. CARMEN BARRETO, GEORGINA HOGGARD, HENRY RAMOS and JANICE WONG are non-defendant members of the Community School Board, District One, having been elected to their positions in the Board elections conducted in New York City on May 14, 1974. Barreto, Hoggard and Ramos are Puerto Rican and Wong is Chinese. All ran for School Board membership as part of the "Community" slate.

7. While not limited to the following, the Community Board, as set forth in §2590-e of the Education Law of the State of New York, has the power and duty, subject to certain limitations, to employ a community superintendent; delegate such of its administrative and ministerial powers and duties as it deems appropriate to the community superintendent; appoint, define the

duties, assign, promote and fix the compensation and terms of employment of its employees; determine matters relating to the instruction of students; generally manage and operate the schools; make repairs to school buildings; operate social centers and recreational and extracurricular programs; operate restaurant and cafeteria services for pupils and teachers; maintain discipline in the schools and appoint teacher-aides for all pre-kindergarten, nursery, kindergarten, elementary, intermediate and junior high schools and programs in connection therewith in the community district.

8. The Community Superintendent's powers and duties derive from the delegation, by the Community Board, of its administrative and ministerial powers and duties to him. The Community Superintendent also has the power to delegate any of his powers and duties to such subordinate officers or employees of his community board as he deems appropriate and to modify or rescind any power and duty so delegated.

In exercising such powers and duties the Community Superintendent shall comply with all applicable provisions of law, bylaws, rules or regulations, directives or agreements of the city board, the Chancellor and his community board and with the educational and operational policies established by the city board and his community board.

9. Defendant KENNETH CAROSELLA is a teacher of mathematics at J.H.S. 60M, served as U.F.T. delegate from J.H.S. 60M between September 1973 and June 1974 and is now and has since November 15, 1974 served as U.F.T. Chapter Chairman for J.H.S. 60M. The plaintiff, as Principal of J.H.S. 60M has brought administrative charges against defendant Carosella for violation

of the Circulars of the Chancellor of the Board of Education of the City of New York regarding campaign activity by school personnel, within school hours and on the premises of the school in the coming Community Board elections.

10. Defendant GARY SOUSA is, upon information and belief, counsel to the Board of Education.

11. Defendant HARRY LASSER is a principal presently assigned to the Office of Labor Relations and Collective Bargaining of the Board of Education.

12. Defendant ROGER BRAVERMAN is a teacher of Health Education at J.H.S. 60M and a member of the U.F.T.

13. Defendant LORRAINE SPIVACK is the Payroll Secretary of J.H.S. 60M and a member of the U.F.T.

14. Defendant IRVING ANKER is Chancellor of the city board district of the City of New York. The Chancellor, pursuant to §2590-h of the Education Law of the State of New York, has among his manifold responsibilities, the power and duty to promulgate and maintain educational standards and curricular requirements for all schools and programs throughout the city districts; promulgate rules and regulations necessary to accomplish the purposes of the Education Law within the New York City Community School District System; control and operate city-wide programs providing services to a substantial number of persons from more than one community district; furnish technical assistance and purchasing services to the community boards; monitor the effectiveness of the schools and programs under the jurisdiction of the community boards; ensure compliance with employment qualifications; establish, control and operate new schools

and programs in consultation with the community boards; establish parents associations and employee training programs; make estimates for operating and capital purposes of all the schools and programs in the city district; perform the functions of the board of audit and establish procedures for record keeping, accounting, and reporting throughout the city district; and to delegate any of his powers and duties to subordinate officers and employees. His powers are to be exercised in a manner consistent with the policies of the Board of Education.

15. Defendants JOSEPH MONSERRAT, STEPHEN AIELLO, JOSEPH G. BARKAN, ROBERT CHRISTFN, AMELIA ASHE, JAMES F. REGAN, and ISAIAH ROBINSON are members of the Board of Education of the city school district of the City of New York. The Board of Education, pursuant to §§2590-g and 2554 of the Education Law of the State of New York, determines all policies of the city school district. In addition, among its manifold responsibilities, the Board has the power and duty to approve the determination of the Chancellor relating to course and curriculum requirements; approve the determinations of the Chancellor relating to estimates for operating and capital purposes; for all purposes, be the "government" or "public employer" of all persons appointed or assigned by the city board of the community boards; to require community boards to make such number of periodic reports as may be necessary to accomplish the purposes of the Education Law with respect to the New York City Community School District System; and, in general, to perform such other duties and possess such other powers as may be required to administer the affairs placed under its control and management, to execute all powers vested in it, and to promote the best interests of the schools and other activities committed to its care.

16. Defendants, heretofore described in paragraphs numbered 3, 4, 5 and 9 through 15, may hereafter be collectively described as the "Governmental defendants".

17. Defendant UNITED FEDERATION OF TEACHERS (U.F.T.) is the exclusive collective bargaining agent for the approximately 63,000 teachers and 10,000 paraprofessionals presently employed in the public schools of the City of New York.

18. Defendant ALBERT SHANKER is President of the U.F.T. As such, he directs the policy of the exclusive bargaining agent for the teachers and paraprofessionals in the public schools of the City of New York. Defendant Shanker is the foremost spokesman for the U.F.T.'s position with respect to the governance and administration of the Community School Districts, and has led the opposition of the U.F.T. to active and effective participation of parents and the community in the affairs of their schools and Community School Districts.

19. Defendant SOL LEVINE is the President of the Junior High School Division of the U.F.T. As such, he is responsible for monitoring the objectives of the U.F.T. in the Junior High Schools of the City of New York.

20. Defendant GEORGE FESKO was formerly the U.F.T. District Representative for Community School District One. As such, he monitored U.F.T. policy in the District, oversaw grievances and served as liaison between the U.F.T. and Community School District One. Upon information and belief, at present, defendant Fesko is the Assistant Director of Staff of the U.F.T.

21. Defendant MAX GREEN is a member, an employee and a representative of the U.F.T.

22. Defendants heretofore described in paragraphs numbered 17 through 21 may hereafter be collectively described as the "U.F.T. defendants".

23. Community School District One is located in the Lower East Side of Manhattan. The District is bounded by 14th Street on the north, the East River on the east, the Bowery on the west and Corlear Hook, Clinton and Delancey Streets to the South.

Residents of the District are for the most part employed in unskilled, semi-skilled or service occupations. The proportion of unemployed adults, welfare recipients and low-income families is among the highest in the City. Official and unofficial estimates of the median income of Puerto Rican families in the District range from \$5,000 to \$6,000. The District is densely populated and most of its residents live in public housing projects and tenements. More than half of the tenements are regarded as substandard.

24. There are sixteen elementary schools with an enrollment of fewer than 13,000 students and four junior high schools with an approximate enrollment of 5,000 students under the jurisdiction of Community School District One.

Of the elementary school students, approximately 75% are Puerto Rican or other Hispanic, 14% are Black, 4% are Oriental and 8% are others. Of the junior high school enrollment, approximately 68% are Puerto Rican or other Hispanic, 17% are Black, 8% are Oriental and 7% are others.

Of the students of J.H.S. 60M, approximately 80% are Puerto Rican or other Hispanic, 10% are Black, 5% are Oriental and 5% are others.

The New York City Board of Education's report of reading scores published at the end of 1972 revealed that 84.3% of the 18,042 children of Community School District One tested failed to read at grade level. Of the thirty-one New York City school districts, District One ranked last in percentage of children reading one or more years (64.4%) and two or more years (48%) below grade level.

25. The governance of School District One in the last several years has been the subject of heated political controversy, and elections for School Board membership in District One have been acrimoniously contested. Prior to a School Board election conducted on May 1, 1973 a majority of the School Board was held by members of a "Community" identified group. In the election of May 1, 1973, a majority of members who had run on a slate closely associated with the U.F.T. replaced the majority formerly held by members of the "Community" slate. This Court examined the background, politics and conduct of the May 1, 1973 School Board elections in District One in Coalition for Education In District One, et al. v. The Board of Elections of the City of New York, et al., 370 F.Supp. 42 (S.D.N.Y. 1974), aff'd. 495 F.2d (2d Cir. 1974). As here, individual members of the Board of Education of the City of New York were defendants in the action.

Of that election, this Court said:

"Although slates of candidates were not officially sanctioned nor slate affiliations listed on the ballots, there were in fact two slates, one comprised of eight, the other of nine candidates . . . One slate, sponsored by the plaintiff, Coalition for Education in District One, was comprised of the incumbent school board, most of whom were Puerto Rican, Black and Chinese and was

recognized in the community to represent the policies of the incumbent board concerning bilingual education and parent and community involvement in the schools. The opposition slate was sponsored by a group called the Committee for Effective Education and supported, financially and otherwise, by the United Federation of Teachers. It consisted of eight White candidates and one Black. The election was bitterly contested between these two groups, and this struggle contained serious racial and ethnic overtones." 370 F.Supp. at 48.

Judge Stewart, so recently as January 11, 1974, further said:

"[T]his Court is not blind to the atmosphere of intense racial hostility which has existed in District One throughout the last several years." 370 F.Supp. at 58.

26. This Court set aside the May 1, 1973 election as held in a "racially discriminatory manner" and ordered a new School Board election for District One held on May 14, 1974. That election resulted in the presently constituted School Board which consists of a majority of five members who had run on a slate closely associated with the U.F.T. and a minority of four members who ran as part of the "Community" slate.

Four of five members of the present U.F.T. associated majority had previously been elected in the May 1, 1973 School Board elections nullified by this Court.

27. The Community School Board, controlled by a majority of U.F.T. associated members, both before this Court's ruling and after the election upon this Court's order in Coalition for Education In District One, set upon a program of reversing all

decisions and actions taken by the predecessor Board and completely reshaping educational policy and programming in District One and punishing Community School District employees associated with the previous administration. As part of this program the defendants commenced a campaign to discharge District One staff members who had been hired by, and therefore were, in the minds of the defendant Board members, politically associated with the "Community" slate majority board. In pursuit of this policy, the U.F.T. dominated Community Board has dismissed or discontinued, in one way or another, more than one hundred administrators, principals, bilingual teachers, paraprofessionals and aides who were either Puerto Rican and/or "guilty" of political association with the "Community" slate majority Board.

28. On August 8, 1974, the Community School Board suspended Luis Fuentes, Superintendent of Community School District One, and a prime focal point of attack for the U.F.T. sponsored anti-community forces, and replaced him with the former Deputy District Superintendent, defendant Anne Mersereau who served as Acting District Supervisor. On February 18, 1974, the School Board ousted Anne Mersereau and replaced her on February 19, 1975 with defendant Leonard Lurie, an outspoken opponent of Mr. Fuentes. Mr. Fuentes had been named District One Superintendent by the earlier School Board Community slate majority.

29. Prior to the Community School Board elections of 1973, plaintiff Gonzalez was asked to meet with defendant Levine, President of the U.F.T., Junior High School Division, defendant Fesko, U.F.T. District Representative, John Sheehan, U.F.T. Chapter Chairman of J.H.S. 60M and another individual. At the

meeting plaintiff was told of the U.F.T.'s interest in using his school as a model of educational growth of a "ghetto" school and in using plaintiff as a model of U.F.T. leadership excellence. Plaintiff was told that the U.F.T. would publicize his efforts and increase his possibilities for future success if he accepted the U.F.T. suggested arrangement. Plaintiff responded that such dealings and such an arrangement went against his moral grain and were contrary to the best interests of his students, their community and their school. Plaintiff made it clear that he would not cooperate with the U.F.T.'s request and was told by defendant Levine that if he did not, should a U.F.T. Board member majority be returned in the next election, it might become difficult for him to do his job as a principal. Defendant Levine made it clear that many obstacles would arise to prevent plaintiff from functioning effectively in his position.

30. Because plaintiff refused to "cooperate" in the arrangement suggested by the U.F.T.; because plaintiff is a Puerto Rican committed to a program of bilingual education for a student body approximately 80% Puerto Rican, 10% Black and 5% Chinese; because plaintiff is outspokenly committed to the program of educational reform and parent and community participation identified with Superintendent Fuentes and the former "Community" majority slate School Board; and, as a result of plaintiff's support, not inconsistent with the directives of the Chancellor of the Board of Education with respect to such support, of the "Community" slate in the School Board election, plaintiff has been subjected to a deliberate and continuing program of harassment, interference and non-cooperation in the performance of his duties as Principal of J.H.S. 60M. This program of harassment, interference, and non-cooperation has been carried out through,

by, and at the instigation of the defendant members, officers and employees of the U.F.T., through, by, and at the instigation of the defendant members of the Community School Board, through, by, and at the instigation of defendant Acting District Superintendents Mersereau and Lurie, through and by defendant Chancellor Irving Anker and defendant members and employees of the Board of Education.

31. To the present, this harassment has taken, inter alia, the following forms:

(a) The Community School Board has failed to act upon the disciplinary recommendations of plaintiff in a manner consistent with the treatment of disciplinary recommendations of non-Puerto Rican principals favored by the U.F.T., and undermining thereby the authority of plaintiff in dealing with school personnel;

(b) The School Board has withdrawn financial support for an existing and effective after-hours Youth Services Agency Center at J.H.S. 60M, forcing the closing of this center, although the Board has continued to support similar Centers located in neighboring schools within the District whose principals are favored by the U.F.T. The closing of the Center has been responsible for increased student discipline problems and increased vandalism at the school, reversing the important gains made by plaintiff in these areas. In dealing with the intensified vandalism and discipline problems, plaintiff is kept from performing other duties of the Principal during the school day and is required to reach the school at approximately 6:30 A.M. each morning to inspect the entire building so that it may be maintained at its present level;

(c) Defendant Chancellor Anker and defendant members of the Board of Education, through and by the Office of Buildings, Board of Education, have withheld a desperately needed painting of the entire school, although this paint job was authorized, scheduled, and awarded to a contractor at a Central Board public meeting. This paint job was scheduled during the superintendency of Mr. Fuentes and withheld after his suspension. Upon information and belief, this was done at the instigation and with the cooperation of defendant Mersereau and defendant members of the Community School Board. Plaintiff is thus compelled to spend an inordinate amount of time looking to the patchwork repair of the badly deteriorating walls and ceilings of his building and is handicapped in his work by the pall cast by the surroundings upon the morale and spirit of his students and staff;

(d) Plaintiff has been required by defendants, Acting Superintendents Lurie and Mersereau, to prepare and submit lengthy, time-consuming, redundant and superfluous reports and explanations on a variety of matters and is kept from the performance of essential duties by the performance of these meaningless tasks;

(e) As a means of securing J.H.S. 60M and keeping strangers off its premises, plaintiff arranged to have certain entrances securely locked so that traffic in and out of the building might be more carefully controlled at the entrances remaining open. On being informed by the fire captain of Engine Co. 5 that the locked doors constituted a fire hazard, plaintiff, in the presence of that fire captain, personally unlocked the doors and has made certain that they

have never again been locked during school hours. Nonetheless, plaintiff has been, and continues to be repeatedly badgered by the Acting Superintendent about this non-existent fire hazard in his school. This is so, although similarly locked doors have been tolerated at the schools of non-Puerto Rican U.F.T.-favored principals, and although a serious fire hazard (an oil leak in the school's basement), the removal of which would require the cooperation of the Community School Board and the Board of Education, was not noted by the inspectors and has not been corrected despite plaintiff's repeated requests. Additionally, plaintiff's school has been the subject of appreciably more frequent fire inspections than the schools of non-Puerto Rican U.F.T.-favored principals, although this frequency is not justified by the existence of violations. These inspections and inquiries with respect to non-existent violations require the plaintiff to take time from the discharge of more important duties;

(f) Plaintiff has been denied, by the Acting District Superintendents, a timely and full investigation in conformity with established procedures, of a fire of mysterious origin confined to plaintiff's office in J.H.S. 60M;

(g) Since shortly after the seating of the U.F.T. majority dominated Board, plaintiff has been denied telephone access to the Acting Superintendents with regard to matters and problems concerning his school, although this access is given in regular course to principals favored by the U.F.T. Plaintiff has, upon calling, been variously informed that the Acting Superintendent is:

"on the other line",
"in conference",
"walking down the hall",
"walking up the hall",
"just entering the building",
"just leaving the building",
"in the ladies' room",
"in the men's room",
"in another office".

Plaintiff's telephone calls to the defendants Acting Superintendents Mersereau and Lurie have not been returned;

(h) Plaintiff has been effectively denied, by and through defendant Lasser, the assistance of the Office of Labor Relations and Collective Bargaining of the Central Board of Education whose function is to clarify and advise upon questions with respect to the U.F.T. contract. Plaintiff's inquiries receive general, evasive and unhelpful answers although prompt, clear and to the point information is made available to others. / Similarly, plaintiff has been unable to communicate directly with defendant Sousa, counsel to the Board of Education of the City of New York. Plaintiff's inquiries are channeled to subordinate lawyers who invariably profess or exhibit a lack of knowledge of the subject in question and who promise a response when information is obtained. In plaintiff's case, these promises are never kept although the information sought is essential to the smooth operation of plaintiff's school and although such information is made available to non-Puerto Rican principals and staff favored by the U.F.T.;

(i) The Community School Board and the Acting District Superintendents have denied to the plaintiff and J.H.S. 60M the services of a remedial reading paraprofessional although they have been repeatedly informed of his necessity by plaintiff and although the Federally supported remedial reading program (E.D.L.) indicated the need for the services of such a paraprofessional and Federal funds have been provided the School Board for the express purpose of obtaining such services. In withholding this assistance from the remedial reading programs defendants have subverted the efforts of the plaintiff in raising the low reading averages of his student body;

(j) Defendants Acting Community Superintendents Mersereau and Lurie and the defendant members of the Community Board have denied plaintiff and J.H.S. 60M adequate staff for the school cafeteria although more than ample cafeteria staff have been provided the schools of non-Puerto Rican principals favored by the U.F.T.;

(k) Defendants Carosella, Green and, upon information and belief, defendants Mersereau, Lurie and defendant members of the Community Board, defendants Shanker, Levine, Fesko and defendant U.F.T., instigated and were responsible for Community School Board election campaign activity by and with school personnel, during school hours and on the premises of J.H.S. 60M on January 29, 1975, in violation of the specific directives of the Chancellor of the Board of Education with respect to such activity. The defendants by this activity undermined the authority of the plaintiff in the administration of his school and prevented the proper conduct of its affairs;

(l) Defendant Braverman, and upon information and belief, defendant Lurie, defendant members of the Community Board, defendants Shanker, Levine, Fesko, Green, Carosella and defendant U.F.T., instigated and were responsible for the appearance of defendant Braverman at a meeting of a Human Relations course held for District One personnel on February 26, 1975, at which defendant Braverman spoke derogatorily of the plaintiff's principalship undermining thereby the professional authority and reputation of plaintiff and impairing his ability to act as principal;

(m) Defendant Acting Superintendent Lurie made derogatory and defamatory statements regarding the plaintiff's principalship to John Davis and Daryl Spence. Davis had heard favorable reports about plaintiff's principalship from parents and students and had sought to place Spence, a young student charged to his care, in plaintiff's school, J.H.S. 60M. Davis and Spence encountered administrative difficulties they would not have faced had they sought a place in the school of a non-Puerto Rican principal and believed their future relationship with plaintiff undercut by what they regarded as the irresponsible and unprofessional conduct of defendant Lurie;

(n) Defendant Acting Superintendent Lurie has sought and obtained from defendant Spivack, Payroll Secretary of J.H.S. 60M, personal information about plaintiff, taken improperly and without authority from the personal files of plaintiff, located in the principal's office at J.H.S. 60M. In so doing, defendant Lurie has apparently acted without proper authority and has encouraged disloyalty to plaintiff Gonzalez among the personnel of the school and

Community District One and has impaired the authority of plaintiff in conducting the affairs of the school.

32. Upon information and belief, the persistent harassment and interference complained of herein is intended by defendants not only to "punish" plaintiff for his Puerto Rican ancestry and for his association with and expressions of support for Superintendent Fuentes and the community; it is pursued as a means of building a false record of inferior performance and non-accomplishment for plaintiff as the basis for some future disciplinary action or termination as a political and racial undesirable by the U.F.T. Board majority, although plaintiff's record reveals him to be an exemplary principal who has, to the present, earned performance ratings of an excellence unequalled in his district.

33. The activities of the "Governmental defendants" complained of herein jeopardize plaintiff's professional reputation and career prospects; constructively deprive plaintiff of the liberty to practice his profession; impair plaintiff's right to make and enforce contracts; deny the plaintiff the equal protection of the laws and constitute a violation of plaintiff's rights of association and free expression that are protected by the First and Fourteenth Amendments of the Constitution of the United States; and, violate 42 U.S.C. §1981 and 42 U.S.C. §1983.

34. The activities of the "U.F.T. defendants", private persons jointly engaged with some or all of the "Governmental defendants" in the prohibited actions complained of herein, jeopardize plaintiff's professional reputation and career prospects; constructively deprive plaintiff of the liberty to practice

his profession, impair plaintiff's right to make and enforce contracts; deny the plaintiff the equal protection of the laws and constitute a violation of plaintiff's rights of association and free expression that are protected by the First Amendments of the Constitution of the United States; and, violate 42 U.S.C. §1981 and 42 U.S.C. §1983.

COUNT TWO

35. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 34, noting in particular Paragraphs 27 through 31, as though each and every such paragraph were more fully set forth herein.

36. The "U.F.T. defendants" and defendants Acting District Superintendents Mersereau and Lurie, and defendants Roher, Price, Goodman, Kozlowsky and Rubin, members of Community School Board District One, and defendants Carosella, Sousa, Lasser, Braverman and Spivack wrongfully and willfully conspired for the purpose of depriving plaintiff of the equal protection of the laws, have acted in furtherance of the object of such conspiracy as set forth in Count One, and have injured plaintiff and deprived him of having and exercising his rights as a citizen of the United States.

37. Pursuant to 42 U.S.C. §1985(3), plaintiff seeks damages against the defendants for said injury and deprivation in an amount sufficient to compensate him for his injury and for his attorneys' fees and costs in this action.

38. Because the conspiracy and acts in furtherance of the object thereof were wrongfully and willfully engaged in by

defendants, plaintiff is entitled to exemplary damages in an amount sufficient to punish defendants.

COUNT THREE

39. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 38 as though each and every paragraph were more fully set forth herein.

40. The "U.F.T. defendants" and the "Governmental defendants", having knowledge of the conspiracy alleged in Count Two hereof, and of some or all of the acts to be committed in furtherance of the object thereof, having the power to prevent or aid in preventing the same, neglected or refused to do so to plaintiff's injury.

41. Pursuant to 42 U.S.C. §1986, plaintiff seeks recovery of damages against the defendants in an amount sufficient to compensate him for his injury and for his attorneys' fees and costs in this action.

42. Because the defendants wrongfully and willfully neglected or refused to prevent the injury to him, plaintiff is entitled to exemplary damages in an amount sufficient to punish defendants.

WHEREFORE, plaintiff prays for relief as follows:

1. As to Count One:

- (a) for a judgment declaring that the "Governmental defendants'" acts of harassment, interference and non-cooperation constitute a violation of

plaintiff's rights protected by the First and Fourteenth Amendments and 42 U.S.C. §1981 and §1983;

- (b) for a judgment declaring that the "U.F.T. defendants'" acts of harassment, interference and non-cooperation constitute a violation of plaintiff's rights protected by the First and Fourteenth Amendments and 42 U.S.C. §1981 and §1983;
- (c) for an injunction compelling defendants to cease and desist from their acts of harassment, interference and non-cooperation; and, to expunge from plaintiff's file any improper or deleterious entry based upon the acts complained of herein; and
- (d) for damages in an amount sufficient to compensate plaintiff for his injury, costs and attorneys' fees.

2. As to Count Two:

- (a) for a judgment declaring that a conspiracy existed among defendants, the object of which was the denial to plaintiff of his rights to the equal protection of the law; and, that plaintiff was injured as a result of that conspiracy;
- (b) for damages in an amount sufficient to compensate plaintiff for his injury, costs and attorneys' fees; and

- (c) for exemplary damages in an amount sufficient to punish defendants for their willfull and wrongful acts.

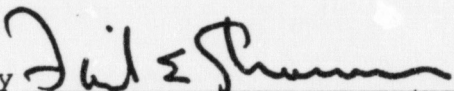
3. As to Count Three:

- (a) for a judgment declaring that defendants had knowledge of a conspiracy against plaintiff that denied him his right to the equal protection of the laws, and neglected or refused to prevent the injury suffered by plaintiff as a result of the conspiracy;
- (b) for damages in an amount sufficient to compensate plaintiff for his injury, costs and attorneys' fees; and
- (c) for exemplary damages in an amount sufficient to punish defendants for the wrongful and willful neglect or refusal to prevent injury to plaintiff.

4. For such other and further relief as the Court deems appropriate.

Dated: New York, New York
April 4, 1975

LAYTON and SHERMAN

By 
(A Member of the Firm)
Attorneys for Plaintiff
50 Rockefeller Plaza
New York, New York 10020
(212) 586-4300

Notice of Motion to Dismiss Complaint by Defendants
United Federation of Teachers

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

27

RAUL GONZALEZ,

Plaintiff,

-against-

ALBERT SHANKER, ANNE MERSEREAU,
LEONARD LURIE, ADOLPH ROHER,
RICHARD LEE PRICE, JEROME GOODMAN,
CAROLYN KOZLOWSKY, MARTIN RUBIN,
KENNETH CAROSELLA, GARY SOUSA,
HARRY LASSER, ROGER BRAVERMAN,
LORRAINE SPIVACK, IRVING ANKER,
JOSEPH MONSERRAT, STEPHEN AIELLO,
JOSEPH G. BARKAN, ROBERT CHRISTEN,
AMELIA ASHE, JAMES F. REGAN,
ISAIAH ROBINSON, THE UNITED FEDERATION
OF TEACHERS, SOL LEVINE, GEORGE FESKO
and MAX GREEN,

NOTICE OF MOTION
75 Civ. 1705 (WK)

Defendants.

S I R S:

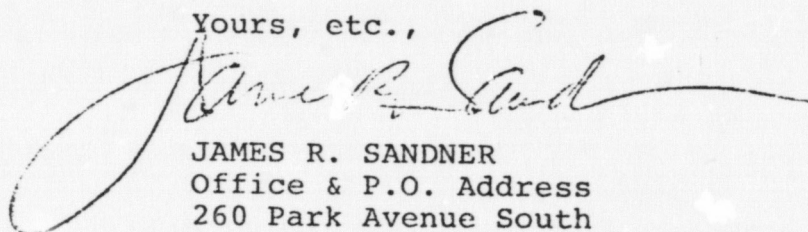
PLEASE TAKE NOTICE that upon the annexed affidavit of STEPHEN A. PERELSON, sworn to on May 20, 1975 and upon all of the pleadings and proceedings heretofore had herein, the defendants, KENNETH CAROSELLA, ROGER BRAVERMAN, LORRAINE SPIVACK, ALBERT SHANKER, SOL LEVINE, GEORGE FESKO, MAX GREEN and THE UNITED FEDERATION OF TEACHERS, will move this Court at a motion part thereof, to be held before the Honorable Whitman Knapp, at the Federal Courthouse, Room 1105, Foley Square, Borough of Manhattan, City and State of New York, on the 27th day of June, 1975, at 2:00 P.M. in the afternoon of that day or as soon thereafter as counsel can be heard for an order, pursuant to Rule 12(b) of the Rules of Federal Procedure, dismissing the complaint on the grounds that:

a) The Court lacks jurisdiction over the subject matter of this action in that the plaintiff has failed to exhaust his state administrative remedies, and,

b) No cause of action is stated upon which relief can be granted.

Dated: May 20, 1975.

Yours, etc.,



JAMES R. SANDNER
Office & P.O. Address
260 Park Avenue South
New York, New York 10010
212 - 533-6300

TO: LAYTON and SHERMAN
Office & P.O. Address
50 Rockefeller Plaza
New York, N.Y. 10020

W. BERNARD RICHLAND
Corporation Counsel
Municipal Building
New York, N.Y. 10007

Affidavit of Stephen A. Perelson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

29

RAUL GONZALEZ,

Plaintiff,

-against-

ALBERT SHANKER, ANNE MERSEREAU,
LEONARD LURIE, ADOLPH ROHER,
RICHARD LEE PRICE, JEROME GOODMAN,
CAROLYN KOZLOWSKY, MARTIN RUBIN,
KENNETH CAROSELLA, GARY SOUSA,
HARRY LASSER, ROGER BRAVERMAN,
LORRAINE SPIVACK, IRVING ANKER,
JOSEPH MONSERRAT, STEPHEN AIELLO,
JOSEPH G. BARKAN, ROBERT CHRISTEN,
AMELIA ASHE, JAMES F. REGAN,
ISAIAH ROBINSON, THE UNITED FEDERATION
OF TEACHERS, SOL LEVINE, GEORGE FESKO
and MAX GREEN,

AFFIDAVIT
75 Civ. 1705
(WK)

Defendants.

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

STEPHEN A. PERELSON, being duly sworn, deposes and
says:

1. Deponent is counsel for the defendants, KENNETH CAROSELLA, ROGER BRAVERMAN, LORRAINE SPIVACK, ALBERT SHANKER, SOL LEVINE, GEORGE FESKO, MAX GREEN AND THE UNITED FEDERATION OF TEACHERS.
2. This affidavit is submitted in support of defendants' motion pursuant to Rule 12(b) of the Federal Rules of Civil Procedure to dismiss the complaint herein for plaintiff's failure to state a claim against the defendants upon which relief can be granted and for plaintiff's failure to exhaust the adequate state administrative remedies available to him.
3. Deponent is fully acquainted with the facts of this case dating from its inception and to the best of my

knowledge, the plaintiff has failed to exhaust the administrative remedies available to him in that he has not pursued his remedies under the CSA Collective Bargaining Agreement in force covering school principals and other supervisory personnel. A copy of said agreement is attached hereto and marked Exhibit A.

4. Article XI of the C.S.A. Agreement specifically provides for resolution of complaints by a supervisor that "a person or persons or groups are engaging in a course of harassing conduct, or acts of intimidation, which are being directed against him in the course of his employment. . . ." Furthermore, Article VI-J provides protection if "inaccurate or unfair material" is placed in a supervisor's file, and Article VII-J provides procedures to review a discharge.

5. The complaint fails to state any facts to show that the defendants CAROSELLA, BRAVERMAN, SPIVACK, SHANKER, LEVINE, FESKO AND GREEN have taken any actions to deny plaintiff of his civil rights. Further, the complaint fails to make any factual allegations that the United Federation of Teachers has taken any actions which deny plaintiff of his civil rights.

6. Plaintiff Gonzalez fails to state any facts nor make any allegations showing that any actions taken by the defendants has violated his civil rights. Plaintiff at most alleges the possibility that he may be discharged in the future.

7. At most, the complaint makes vague and conclusionary statements that the defendants collectively called the "Governmental defendants" have exercised their statutory powers to oversee the operation of the school of which the plaintiff is now principal.

8. The Civil Rights Act, 42 U.S.C. 1983, provides relief only where "State" actions are involved to deprive the individual of his civil rights.

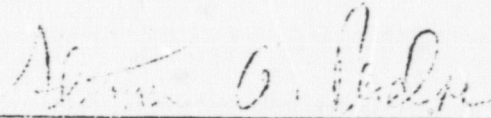
9. Even if the Court were to find a justiciable controversy based on the allegations against the defendants collectively described as "Governmental defendants" there is no allegation that the United Federation of Teachers and the defendants collectively described as "U.F.T. defendants" are in any way engaged in such state action. Emphatically, the U.F.T. and the "U.F.T. defendants" as a labor union and as private citizens are not involved in state action. Moreover, the United Federation of Teachers is not a "person", within the meaning of 42 U.S.C. §1983.

10. The Civil Rights Act, 42 U.S.C. 1985 does not create a general cause of action for a conspiracy to deny any and all federally guaranteed rights, but only those rights specified in the Act. No facts are alleged to show the U.F.T. or the "U.F.T. defendants" have conspired to violate any of the enumerated rights protected by the Act.

11. The complaint alleges no facts to support the allegation that the United Federation of Teachers or any of the defendants collectively described as the "U.F.T. Defendants" were engaged in any conspiracy with the defendants collectively described as "Governmental defendants" to deny the plaintiff his civil rights.

WHEREFORE, your deponent respectfully requests that the annexed motion to dismiss the complaint herein against

the United Federation of Teachers and the defendants collectively known as the U.F.T defendants be dismissed, with such other and further relief as the Court may deem just and proper.



STEPHEN A. PERELSON

Sworn to before me this
20th day of May, 1975.



NOTARY PUBLIC

HOLL D. CORLEW
NOTARY PUBLIC, State of New York
No. 24-8749880
Qualified in Kings County
Commission Expires March 30, 1976

Exhibit A Annexed to Affidavit of Stephen A. Perelson

(Not Printed—Same as Exhibit A Annexed to Affidavit
of Joseph Bruno Printed Herein on Pages 44 through 122.)

Notice of Motion to Dismiss Complaint as to City Defendants

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

34

-----x
RAUL GONZALEZ,

Plaintiffs,

-against-

ALBERT SHANKER, ANNE MERSEREAU,
LEONARD LURIE, ADOLPH ROHER,
RICHARD LEE PRICE, JEROME GOODMAN,
CAROLYN KOZLOWSKY, MARTIN RUBIN,
KENNETH CAROSELLA, GARY SOUSA,
HARRY LASSER, ROGER BRAVERMAN,
LORRAINE SPIVACK, IRVING ANKER,
JOSEPH MONSERRAT, STEPHEN AIELLO,
JOSEPH G. BARKAN, ROBERT CHRISTEN,
AMELIA ASHE, JAMES F. REGAN,
ISAIAH ROBINSON, THE UNITED FEDERATION
OF TEACHERS, SOL LEVINE, GEORGE PESKO
and MAX GREEN,

NOTICE OF MOTION
TO DISMISS

75 Civ. 1705

(JUDGE KNAPP)

Defendants.
-----x

S I R S :

PLEASE TAKE NOTICE that upon the summons and complaint and action for relief under 42 U.S.C. §§ 1981, 1983, 1985(3) and 1986 and upon the affidavit of Joseph F. Bruno, sworn to the 21st day of May, 1975, the City defendants by their attorney W. BERNARD RICHLAND, Corporation Counsel of the City of New York, will more this Court before the Honorable Whitman Knapp at Courtroom 1105 at the Courthouse at Foley Square, New York, New York on the 27th day of June, 1975 at 2:00 P.M. or as soon thereafter as counsel can be heard for an order pursuant to F.R.C.P. 12(b)(6) dismissing the complaint and action of the plaintiff as to all defendants for failure to state a claim upon which relief can be granted or in the alternative for an order dismissing the complaint as to City defendants Anker, Monserrat, Aiello, Barkan, Christen, Ashe, Regan, Robinson, Lasser and Sousa for failure to allege specific facts to establish a claim upon which

relief could be granted against each under 42 USC §§ 1981, 1983, 1985(3) and 1986 and for an order pursuant to F.R.C.P. 12(b) (5) dismissing the complaint as to defendants Lurie, Price, Goodman, Kozlowsky and Lasser for failure to serve said defendants with process and for such other relief as this Court deems just and proper.


Dated: New York, New York

May 21, 1975

Yours etc.,

W. BERNARD RICHLAND
Corporation Counsel
City of New York
Attorney for City
Defendants, Mersereau,
Roher, Rubin, Sousa,
Anker, Monserrat, Aiello,
Barkan, Christen, Ashe,
Regan, Robinson
Office & P.O. Address
Municipal Building
New York, New York 10007

By


JOSEPH F. BRUNO
Assistant Corporation Counsel

TO:

LAYTON & SHERMAN, ESQS.
Attorneys for Plaintiff
50 Rockefeller Plaza
New York, New York 10020

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK

RAUL GONZALEZ

Plaintiff,

-against-

ALBERT SHANKER, ANNE MERSEREAU,
LEONARD LURIE, ADOLPH ROHER,
RICHARD LEE PRICE, JEROME GOODMAN,
CAROLYN KOZLOWSKY, MARTIN RUBIN,
KENNETH CAROSELLA, GARY SOUSA,
HARRY LASSER, ROGER BRAVERMAN,
LORRAINE SPIVACK, IRVING ANKER,
JOSEPH MONSERRAT, STEPHEN AIELLO,
JOSEPH G. BARKAN, ROBERT CHRISTEN,
AMERLIA ASHE, JAMES F. REGAN,
ISAIAH ROBINSON, THE UNITED
FEDERATION OF TEACHERS, SOL LEVINE,
GEORGE FESKO, AND MAX GREEN,

AFFIDAVIT IN
SUPPORT OF MOTION
TO DISMISS

75 Civ. 1705
(JUDGE KNAPP)

Defendants

JOSEPH F. BRUNO, being duly sworn, deposes
and says:

1. I am an attorney in the office of W. BERNARD
RICHLAND, Corporation Counsel, City of New York, attorney
for the defendants, Mersereau, Roher, Rubin, Sousa, Anker,
Monserrat, Aiello, Barkan, Christen, Ashe, Regan, and
Robinson (referred to, at times, hereinafter as the
"City defendants").

2. This affidavit is submitted in support of
a motion made by the city defendants to dismiss the com-
plaint in this action pursuant to Rule 12(b)(6) of the
FRCP for failure to state a claim upon which relief can
be granted in that 1) the claims of plaintiffs are
not "ripe" for adjudication by this Court, 2) the plain-
tiff has failed to exhaust his available, adequate and
speedy administrative and/or contractual remedies prior
to instituting this suit, 3) in the alternative to
dismissing the complaint in its entirety and as to all
city defendants, the complaint should be dismissed as

to defendants, Anker, Monserfat, Aiello, Barkan, Christen, Ashe, Regan, Robinson, Lasser *and Sousa in that it contains only "vague and conclusory" allegations respecting said defendants' actions, participation in or knowledge of a conspiracy which violates plaintiff's civil rights under 42 U.S.C. §§1981, 1983, 1985(3) or 1986, the Constitution or its amendments. Further, this affidavit is in support of dismissal of the complaint against named defendants Lurie, Price, Goodman, Kozlowsky **, Lasser pursuant to Rule 12(b)(5), who on information and belief, have not been served to date with process in this case.

3. Plaintiff is the current principal of the Ottilia M. Beha Junior High School (J.H.S.60M) located in Community School District No. 1 in Manhattan. J.H.S.60M is a school under the operational authority of Community School Board No. 1 (CSB No.1) pursuant to the dictates of section 2590-e of the Education Law of the State of New York.

4. On information and belief the plaintiff is not presently the subject of any charges, disciplinary or otherwise, against his performance as principal of J.H.S. 60M. No suspension, dismissal, discharge or adverse determination is being sought against the plaintiff's

* While defendant Lasser has not been served with process, his claim would likewise be dismissable on the grounds stated herein and as such and for the sake of continuity his name is included with this group of city defendants.

** Defendant Kozlowsky has not to date advised our office whether she has, in fact, been served with process. Since we would normally represent her as a member of Community School Board No. 1 and in view of the silence on her part, I am assuming that she has not been served with process.

position. In short, plaintiff's position as principal is not threatened in any way by any currently pending disciplinary charges or proceedings.

5. As the principal of a junior high school in the New York City School system, plaintiff is a supervisory employee covered by the presently effective Agreement between the Board of Education of the City School District of the City of New York and Counsel of Supervisors and Administrators of the City of New York, Local 1, School Administrators and Supervisors Organizing Committee, AFL-CIO, October 1, 1972 - October 1, 1975 (referred to hereinafter as the "CSA contract" and attached hereto as Exhibit A).

6. In paragraph "31" of his complaint, plaintiff details approximately fourteen (14) incidents of harassment or interference with his work as principal of J.H.S. 60M allegedly engaged in by various individual defendants or groups of defendants. At most, the described incidents which are alleged to constitute a conspiracy, establish an internal administrative dispute between plaintiff and various other employees within the same educational system which has not, to date, resulted in any present danger or damage to plaintiff's position as principal of J.H.S. 60M.

7. At paragraph "32" of the complaint, the plaintiff claims that the alleged harassment and interference by defendants is being pursued as a means of

building a "false record" to be used in some future disciplinary proceeding.

8. Despite this, plaintiff presently seeks injunctive and declaratory relief and damages against defendants in this Court under 42 U.S.C. §§1981, 1983, 1985(3) and 1986.

9. The federal courts will not entertain a suit under the Civil Rights Act for injunctive or declaratory relief in a school personnel or management problem unless the action complained of is final within the institution and there is a real and present harm to the plaintiff, i.e. it is "ripe" for judicial resolution.

10. In the case at bar, the plaintiff's position is unharmed and unchallenged and no final action of school authorities has occurred. As such, the claims of the plaintiff are premature and are not ripe for judicial resolution. The Court is respectfully referred to Point I of the accompanying memorandum of law in support of the motion to dismiss for a detailed discussion and argument on the issue of "ripeness" or "prematurity" in the case at bar.

11. The central claims of plaintiff expressed in his complaint are (1) that the defendants are engaging in a "deliberate and continuing program of harassment, interference and non-cooperation in the performance of his duties as principal of J.H.S. 60M" (paragraphs "30", "31", "32", "35" to "36", complaint), (2) that the defendants are interfering with plaintiff "as a means of building a false record of inferior performance

and non-accomplishment for plaintiff as a basis for some future disciplinary action or termination " (paragraph "32", complaint), (3) that defendants are placing improper and deleterious material based on the acts complained of in the complaint, in plaintiff's personnel file ("wherefore clause", Count 1, -subd. (1)(c), complaint).

12. The CSA contract (Exhibit A, attached hereto) provides an administrative remedy for each of the claims alleged in the complaint which is adequate speedy and sufficiently potent to provide real relief to plaintiff. Article XI of the CSA contract provides a specific remedy for individual or organized harassment or interference with a supervisor's employment. Article VII provides a remedy for any disciplinary action, dismissal or discharge of a supervisor from his employment. Article VI provides the rules under which a personnel file may be kept on a supervisor. Article X provides an overall grievance procedure for any violation of the CSA contract.

13. On information and belief, the plaintiff has failed to exhaust the available and adequate administrative remedies found in the CSA contract which could provide a remedy for the claims contained in his complaint. The Court is respectfully referred to Point II(A) of the memorandum of law in support of the city defendants' motion to dismiss, submitted herewith.

14. In this Circuit prior to bringing a suit in federal court for relief under the Civil Rights statutes, a plaintiff must exhaust all available and adequate remedies or suffer dismissal of his complaint. The Court is respectfully referred to Point II(B) of the memorandum of law of the city defendants in support of their motion to dismiss, submitted herewith.

15. Other than the recurrent pronouncements that defendants have discriminated against plaintiff on the basis of his Puerto Rican heritage and his alleged support and alignment with the former superintendent of CSD No. 1, Luis Fuentes, the allegations of the complaint are a classic example of the type of administrative disputes for which the administrative remedies included in the CSA contract were fashioned. This Court should therefore permit the administrative process, as that best suited for the role, to deal with the harassment and interference scheme alleged to be directed at the plaintiff. *

16. A plaintiff must allege specific facts which establish certain overt acts on the part of each defendant who is alleged to have violated one's civil rights or to have participated in a conspiracy to violate one's civil rights. Further, if a plaintiff alleges knowledge of a conspiracy to violate one's civil rights, specific facts also must be alleged. Failure to plead said facts against a defendant in a civil rights action will give rise to and support a motion to dismiss.

17. In the case at bar, the plaintiff has failed to plead any specific facts to establish in what manner defendants Anker, Monserrat, Aiello, Barkan, Christen Ashe, Regan, Robinson, Lasser and Sousa, violated plaintiff's civil rights. The Court is respectfully referred to Point III of the memorandum of law of city defendants in support of a motion to dismiss, submitted herewith.

18. As of the date of this affidavit, named defendants Lurie, Price, Goodman, Kozlowsky and Lasser, have not been served with process in this action and, as such, pursuant to Rule 12(b)(5) of the FRCP, the complaint must be dismissed as to these defendants. The Court is respectfully referred to Point IV of the memorandum of law of city defendants in support of the motion to dismiss, submitted herewith.

19. On the basis of the foregoing, the complaint should be dismissed in all respects on the grounds that the claims of plaintiff contained in the complaint are not "ripe" for adjudication by the Court and the plaintiff has failed to exhaust the available and adequate administrative remedies contained in the CSA contract (Exhibit A, attached hereto). In the alternative, the complaint should be dismissed as to defendants Anker, Monserrat Aiello, Barkan, Christen, Ashe, Regan, Robinson, Lasser and Sousa, in that the complaint only states "vague, conclusory and insufficient" allegations as to the defendants actions in directly violating plaintiff's civil rights or in participating in a conspiracy to violate plaintiff's civil rights or in having knowledge of said conspiracy and not acting to prevent it. Further, as to defendants, Lurie, Price, Goodman, Kozlowsky and Lasser the complaint must be dismissed for failure

to serve these defendants with process.

Joseph T. Bunker

Sworn to before me

this 21st day of May, 1975.

Elliott R. Hoff

Notary

Comm. Expires 10.01.1978

A G R E E M E N T

between

THE BOARD OF EDUCATION

of the

CITY SCHOOL DISTRICT

of the

City of New York

and

COUNCIL OF SUPERVISORS AND ADMINISTRATORS

OF THE CITY OF NEW YORK

LOCAL 1, SCHOOL ADMINISTRATORS AND SUPERVISORS

ORGANIZING COMMITTEE, AFL-CIO

October 1, 1972-October 1, 1975

PREPARED BY THE
OFFICE OF LABOR RELATIONS AND COLLECTIVE BARGAINING
OF THE
BOARD OF EDUCATION

IDA KLAUS, Executive Director
JERROLD MEHLMAN, Deputy Director

DAVID BASS
FREDERICK F. FISHER
HARRY LASSER
THOMAS RYAN
HAROLD STEIN
ADRIENNE DAVIS TROTT
MARY R. WEED

Inquiries may be forwarded to:

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Meeting the educational needs of the children of New York City demands the maximum cooperation of all concerned. The Board of Education and the Council of Supervisors and Administrators therefore pledge that their joint efforts will be dedicated to the achievement of the standard of educational excellence that all pupils deserve and that the community has a right to expect.

AGREEMENT MADE AND ENTERED INTO AS OF THE 1st day of October, 1972, by and between THE BOARD OF EDUCATION OF THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK (hereinafter referred to as the "Board") and COUNCIL OF SUPERVISORS AND ADMINISTRATORS OF THE CITY OF NEW YORK LOCAL 1, SCHOOL ADMINISTRATORS AND SUPERVISORS ORGANIZING COMMITTEE, AFL-CIO (hereinafter referred to as "CSA").

WHEREAS CSA has submitted satisfactory evidence that it represents a majority of supervisory employees in the titles covered by this agreement; and

WHEREAS CSA is therefore deemed to be the exclusive collective bargaining representative for all supervisory employees covered by this agreement; and

WHEREAS an agreement entered into by and between the parties on October 1, 1969, by its terms will expire on September 30, 1972; and

WHEREAS pursuant to the provisions of the Public Employees Fair Employment Law the Board and its designated representatives have met with representatives of CSA and fully discussed with them the terms and conditions of employment affecting the supervisory employees covered by this agreement;

NOW THEREFORE it is agreed as follows:

ARTICLE I
RECOGNITION

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The Board recognizes the CSA as the exclusive bargaining representative of all employees of the Board serving by appointment or assignment under license or other pedagogical certification in pedagogical supervisory or administrative positions in schools, bureaus, districts, or central offices and receiving the salary established for such position, excluding managerial and confidential employees in these titles designated as managerial or confidential under the procedures established by the Taylor Law or by agreement of the parties.

Those in the supervisory and administrative positions described above include employees in the following titles and in similar titles established hereafter during the term of this agreement:

A. School Supervisors:

Assistant Principal in Day Elementary Schools
Assistant Principal in Junior High Schools (Administration)
Assistant Principal in Junior High Schools (Supervision)
Assistant Principal in School for the Deaf
Assistant Principal in Academic High Schools (Administration)
Assistant Principal in Vocational High Schools (Administration)
and Day High Schools (Administration)
Assistant Principal in Day Academic and Vocational High Schools
(Supervision)
Junior Principal, Junior Principal of School for Socially Mal-
adjusted and Emotionally Disturbed Children,
Junior Principal of a (400) School and of a
School for Children with Retarded Mental
Development (Ages 17-21 years)
Principal of Elementary Schools
Principal of School for the Deaf
Principal of Junior High Schools
Principal of Day High Schools

Principal of Day Academic and Vocational High Schools
Principal of Youth and Adult Center

B. Other Supervisors

Director of All Day Neighborhood School Program
Director of Art
Director of Attendance
Director of Audio-Visual Instruction
Director of Broadcasting
Director, Bureau of Child Guidance
Director of the Bureau of Children with Retarded Mental Development
Director of Bureau for Hearing Handicapped Children
Director of Business Education
Director of Community Education Centers
Director of Continuing Education
Director of Cooperative Education
Director of Early Childhood Education
Director of the Education of the Physically Handicapped
(other than visually or acoustically handicapped)
Director of Education of Socially Maladjusted Children
Director of the Education of the Visually Handicapped
Director of Educational Staff Recruitment
Director of Elementary School Reading Clinics
Director of English
Director of Foreign Languages
Director of Guidance
Director of Health and Physical Education
Director of Home Economics
Director of Industrial Arts
Director of In-Service-Training
Director of Mathematics
Director of Music
Director of School Library Service
Director of School Plant Planning (Educational Facilities)
Director of Science
Director of Social Studies
Director of Specially Funded Programs - Bureau of Supplies
Director of Speech Improvement
Director of Trade and Technical Subjects
Director of Zoning
Assistant Administrative Director
Assistant Director of Administrative & Budgetary Research
Assistant Director of Art
Assistant Director of Audio-Visual Instruction
Assistant Director of Audio-Visual Instruction
(Technical Operations)
Assistant Director of Broadcasting (Programming and
Production)

Assistant Director of Broadcasting (Technical Operations)
 Assistant Director, Bureau of Child Guidance
 Assistant Director of Bureau for Hearing Handicapped Children
 Assistant Director of Business Education
 Assistant Director of Classes for Children with Retarded
 Mental Development
 Assistant Director of Community Education
 Assistant Director of Curriculum Research
 Assistant Director of Early Childhood Education
 Assistant Director of Education of the Physically Handicapped
 (other than visually or acoustically handicapped)
 Assistant Director of Education of Socially Maladjusted Children
 (Junior Guidance Classes Program - Clinical)
 Assistant Director of Education of Socially Maladjusted Children
 (Junior Guidance Classes Program - Educational)
 Assistant Director of Educational Program Research and Statistics
 Assistant Director of Educational Research
 Assistant Director of English
 Assistant Director of English for Pupils Learning English as a
 Second Language
 Assistant Director of Foreign Languages
 Assistant Director of Guidance (Educational and Vocational)
 Assistant Director of Health and Physical Education
 Assistant Director of Home Economics
 Assistant Director of Industrial Arts
 Assistant Director of In-Service-Training
 Assistant Director of Mathematics
 Assistant Director of Music
 Assistant Director of Related Technical Subjects in the Vocational
 High Schools
 Assistant Director of School Library Service
 Assistant Director of Science
 Assistant Director of Social Studies
 Assistant Director of Speech Improvement
 Assistant Director of Trade Subjects
 Assistant Director of the Education of the Visually Handicapped
 Supervisor of Art
 Supervisor of Audio-Visual Instruction
 Supervisor of Bi-Lingual Teachers in School and Community
 Relations
 Supervisor of Classes for Children with Retarded Mental Development
 Supervisor of Classes for the Emotionally Disturbed
 Supervisor of Early Childhood Education
 Supervisor of Education of Acoustically Handicapped
 Supervisor of Education of Physically Handicapped
 (other than visually or acoustically handicapped)
 Supervisor of Education of Visually Handicapped

Supervisor of Guidance (Educational and Vocational)
 Supervisor of Health and Physical Education
 Supervisor of Hearing Handicapped Children
 Supervisor of Home Economics
 Supervisor of Industrial Arts
 Supervisor of Industrial Arts & Handicrafts for Physically Handicapped
 Supervisor of Motion Picture Production
 Supervisor of Music
 Supervisor of Program Production: Instructional Radio
 Supervisor of Program Production: Instructional Television
 Supervisor of Continuing Education
 Supervisor of School Gardening
 Supervisor of School Library Service
 Supervisor of Speech Improvement
 Administrator of a Bureau of Child Guidance Center
 Borough Guidance Coordinator (Educational and Vocational)
 (and/or Supervisor of Guidance (E&V))
 Divisional Administrative Assistant
 Divisional Administrative Assistant Assigned to Office of Counsel
 Assistant Director of Attendance
 Chief Attendance Officer
 Division Supervising Attendance Officer
 District Supervising Attendance Officer
 Editor of Curriculum Publications
 Coordinator of Curriculum Periodicals
 Chief School Psychologist
 Chief School Psychiatric Social Worker
 Educational Facilities Standards Coordinator

The employees in these titles are herein referred to variously as "employee" or "employees," "supervisor" or "supervisors" or by title.

It is understood that all collective bargaining is to be conducted at Board headquarters level.

Nothing contained herein shall be construed to prevent any individual employee from (1) informally discussing a complaint with his immediate superior or (2) processing a grievance in his own behalf in accordance with the grievance procedure hereinafter set forth.

Nothing contained herein shall be construed to deny to any employee his rights under Section 15 of the New York Civil Rights Law or under the State Education Law or under applicable civil service laws and regulations.

FAIR PRACTICES

A. CSA agrees that it will continue to admit persons to membership without discrimination on the basis of race, creed, color, national origin, sex or marital status and that CSA will continue to represent equally all employees without regard to membership or participation in, or association with the activities of, any employee organization.

B. The Board agrees to continue its policy of not discriminating against any employee on the basis of race, creed, color, national origin, sex, marital status or membership or participation in, or association with the activities of, any employee organization.

C. The Board agrees that it will not require any supervisor to complete an oath or affirmation of loyalty unless such requirement is established by law.

SALARIES AND WELFARE BENEFITS

A. SALARIES

The salaries for supervisors and the eligibility of requirements therefor are as follows:

1. Eligibility for Salary Increase

a. Employees appointed or assigned before October 1, 1973.

Employees appointed or assigned before October 1, 1973, shall be eligible for the salary rate increases specified in the schedules in Section I below under the following conditions:

1. Salary rates effective as of October 1, 1972, shall be paid only to employees who were assigned or appointed, and paid, in title for at least one year prior to October 1, 1972.

2. Salary rates effective as of October 1, 1973, shall be paid only to employees who were assigned or appointed, and paid, in title for at least one year prior to October 1, 1973.

3. Salary rates effective as of October 1, 1974, shall be paid only to employees who were assigned or appointed, and paid, in title for at least one year prior to October 1, 1974.

b. Employees appointed or assigned on or after October 1, 1973.

Employees appointed or assigned on or after October 1, 1973, shall be eligible for the salary rate increases specified in the schedules in Section I A below under the following conditions:

1. Employees shall be paid at the first step of the salary schedule effective on the October 1 date immediately preceding their appointment or assignment; if appointed or assigned on October 1, they shall be paid at the first step of the salary schedule in effect on the October 1 date. The employee shall be eligible for a salary increase on the October 1 following completion of one year of paid service in title at the rate in effect on that date.

2. An employee appointed or assigned on or after October 1, 1973, to a title for which a schedule of rates is provided in Section II below shall receive the starting salary and scheduled increases as provided therein.

2. Advancement by Increment of Acting Supervisors

a. Except as provided in paragraphs c. and d. below, an Acting Supervisor who was appointed or assigned, and paid in title, for one year or more preceding October 1, 1973, shall become eligible for advancement by increment to the second step in his schedule on October 1, 1973. He shall be eligible for advancement to the next succeeding step in his schedule each October 1 thereafter.

b. Except as provided in paragraphs c. and d. below, Supervisors not eligible for advancement on October 1, 1973, shall receive their next increment by advancement to the next step of their schedule after completing a year of paid service on appointment or assignment in title and shall be eligible for advancement to each next succeeding step in their schedules on each anniversary of their increment date.

c. An Acting Assistant Principal appointed or assigned, and paid, in title prior to October 1, 1973, shall be eligible for advancement by

increment to the second step in his schedule on October 1, 1974. He shall be eligible for advancement to the third step in his schedule on October 1, 1975.

d. An Acting Assistant Principal appointed or assigned, and paid, in title on or after October 1, 1973, shall become eligible for advancement by increment each year thereafter on the anniversary date of his assignment or appointment in title.

SECTION I

A. Multi-step Salary Schedules:

Principal of Day High Schools, Principal of Day Academic and Vocational High Schools:

Year of service as principal of day high schools	<u>Rates Effective</u>			
	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$29,395	\$30,235	\$31,385	\$32,500
2	30,045	31,065	32,215	33,330
3	30,695	31,900	33,050	34,165
4	31,395	33,395	34,395	35,000
5	31,895	33,395	34,395	35,000

Principal of Junior High Schools:

Year of service as principal of elementary, inter- mediate, or junior high school	<u>Rates Effective</u>			
	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$26,320	\$27,700	\$29,170	\$30,770
2	26,645	28,025	29,495	31,095
3	26,970	28,350	29,820	31,420
4	27,295	28,675	30,145	31,745
5	27,620	29,000	30,470	32,070

Principal of Elementary Schools, Junior Principal, Junior Principal of School for Socially Maladjusted and Emotionally Disturbed Children, Junior Principal of a "400" School and of a School for Children with Retarded Mental Development (Ages 17-21 years):

Year of service as principal of element- ary schools or as junior principal	<u>R a t e s E f f e c t i v e</u>			
	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$24,410	\$25,690	\$27,055	\$28,545
2	24,735	26,015	27,380	28,870
3	25,060	26,340	27,705	29,195
4	25,385	26,665	28,030	29,520
5	25,710	26,990	28,355	29,845

Assistant Principal (Supervision) in Day Academic and Vocational High Schools:

Year of Service as such	<u>R a t e s E f f e c t i v e</u>			
	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$21,130	\$22,230	\$23,430	\$24,680
2	21,530	22,630	23,830	25,080
3	21,930	23,030	24,230	25,480

Note a: In this schedule credited gross teaching experience in high schools over and above five years shall be counted.

Note b: Assistant Principal (supervision) - Agriculture shall be paid under this schedule with the addition of 10% to the rate of each salary step herein.

Assistant Principal in Academic High Schools (Administration), Vocational High Schools (Administration) and Day High Schools (Administration):

Year of service as such	<u>R a t e s E f f e c t i v e</u>			
	October 1, 1971	October 1, 1972	October 1, 1973	October 1, 1974
1	\$21,130	\$22,230	\$23,430	\$24,680
2	21,530	22,630	23,830	25,080
3	21,930	23,030	24,230	25,480

Note a: In this schedule credited gross teaching experience in high schools over and above five years shall be counted.

Assistant Principal in Day Elementary and Intermediate and Junior High Schools and Assistant Principal (Supervision) in Intermediate and in Junior High Schools:

Year of service as assistant principal in intermediate and junior high schools	<u>R a t e s E f f e c t i v e</u>			
	October 1, 1971	October 1, 1972	October 1, 1973	October 1, 1974
1	\$21,130	\$22,230	\$23,430	\$24,680
2	21,530	22,630	23,830	25,080
3	21,930	23,030	24,230	25,480

Note a: An assistant principal assigned to service in a school for socially maladjusted and emotionally disturbed children, shall receive additional compensation at the rate of \$600 per annum during continuance of such assignment by the Board of Education upon the recommendation of the Chancellor.

Principal of Youth and Adult Center.

Rates Effective

<u>Year of service as such</u>	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$22,190	\$23,350	\$24,585	\$25,935
2	22,440	23,600	24,835	26,185
3	22,690	23,850	25,085	26,435
4	22,940	24,100	25,335	26,685
5	23,190	24,350	25,585	26,935

Chief Attendance Officer:

Rates Effective

<u>Year of service as such</u>	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$29,395	\$30,135	\$30,875	\$31,620
2	30,045	30,785	31,525	32,270
3	30,695	31,435	32,175	32,920
4	31,395	32,135	32,875	33,000
5	31,895	32,635	33,000	33,000

Division Supervising Attendance Officer:

Rates Effective

<u>Year of service as division supervising attendance officer</u>	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$26,320	\$27,060	\$27,800	\$28,545
2	26,645	27,385	28,125	28,870
3	26,970	27,710	28,450	29,195
4	27,295	28,035	28,775	29,520
5	27,620	28,360	29,100	29,845

District Supervising Attendance Officer:

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Rates Effective

<u>Year of service as district supervising attendance officer</u>	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$21,130	\$22,230	\$23,430	\$24,680
2	21,530	22,630	23,830	25,080
3	21,930	23,030	24,230	25,480

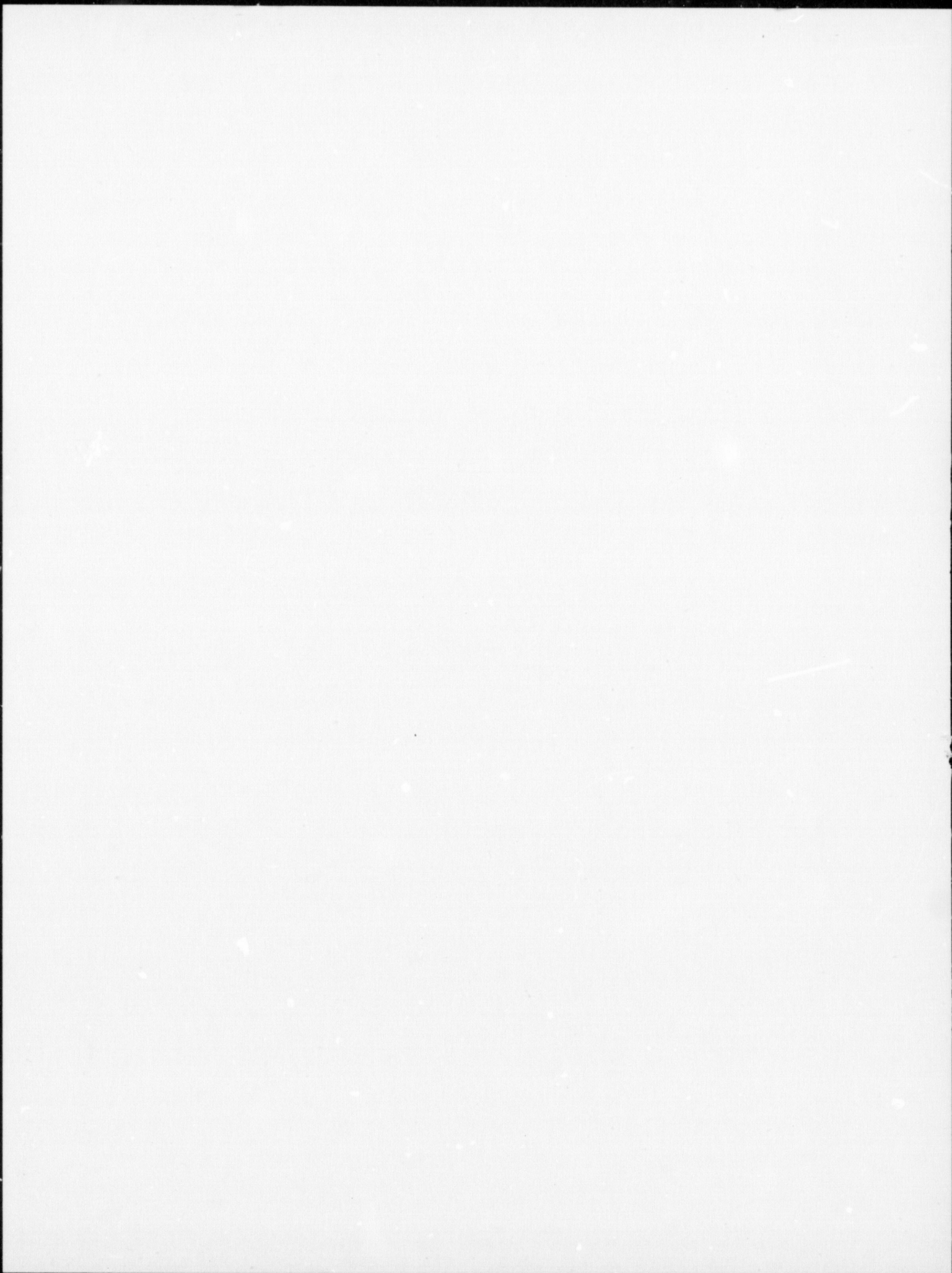
Principal of School
for the Deaf:Rates Effective

<u>Year of service as principal of elementary or junior high school or school for the deaf</u>	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$26,820	\$28,200	\$29,670	\$31,270
2	27,145	28,525	29,995	31,595
3	27,470	28,850	30,320	31,920
4	27,795	29,175	30,645	32,245
5	28,120	29,500	30,970	32,570

Assistant to Principal in School for the Deaf:

Rates Effective

<u>Year of service as assistant to principal in school for the deaf or as chairman of department in junior high schools</u>	<u>October 1, 1971</u>	<u>October 1, 1972</u>	<u>October 1, 1973</u>	<u>October 1, 1974</u>
1	\$21,630	\$22,730	\$23,930	\$25,180
2	22,030	23,130	24,330	25,580
3	22,430	23,530	24,730	25,980



SECTION I

B. Single Step Salary Schedules

	Rates Effective			
	October 1, 1971	October 1, 1972	October 1, 1973	October 1, 1974
Director of All Day Neighborhood School Program	\$29,100	\$30,235	\$31,370	\$32,505
Director of Art	29,100	30,235	31,370	32,505
Director of Attendance	36,566	37,500	37,500	37,500
Director of Audio-Visual Instruction	29,100	30,235	31,370	32,505
Director of Broadcasting	30,100	31,235	32,370	33,505
Director, Bureau of Child Guidance	34,295	35,000	35,000	35,000
Director of the Bureau of Children with Retarded Mental Development				
Director of Bureau for Hearing Handicapped Children				
Director of Business Education				
Director of Community Education Centers				
Director of Continuing Education				
Director of Cooperative Education				
Director of Early Childhood Education				
Director of the Education of the Physically Handicapped (other than visually or acoustically handicapped)				
Director of Education of Socially Maladjusted Children				
Director of the Education of the Visually Handicapped				
Director of Educational Staff Recruitment	29,100	30,235	31,370	32,505
Director of Elementary School Reading Clinics				
Director of English				
Director of Foreign Languages				
Director of Guidance				
Director of Health and Physical Education				
Director of Home Economics				
Director of Industrial Arts				
Director of In-Service-Training	23,230	24,365	25,500	26,635
Director of Mathematics				
Director of Music				
Director of School Library Service	29,100	30,235	31,370	32,505
Director of School Plant Planning (Educational Facilities)				
Director of Science				
Director of Social Studies				
Director of Specially Funded Programs - Bureau of Supplies	23,560	24,695	25,830	26,965
Director of Speech Improvement	29,100	30,235	31,370	32,505
Director of Trade and Technical Subjects				
Director of Zoning				
Chief School Psychiatric Social Worker and Chief School Psychologist	25,710	26,845	27,980	29,115

Rates Effective

	October 1, 1971	October 1, 1972	October 1, 1973	October 1 1974
Assistant Administrative Director	\$24,395	\$25,530	\$26,665	\$27,800
Assistant Director of Administrative & Budgetary Research				
Assistant Director of Art				
Assistant Director of Audio-Visual Instruction				
Assistant Director of Audio-Visual Instruction (Technical Operations)	25,710	26,845	27,980	29,115
Assistant Director of Broadcasting (Programming and Production)				
Assistant Director of Broadcasting (Technical Operations)				
Assistant Director, Bureau of Child Guidance	30 000	31,135	32,270	33,405
Assistant Director of Bureau for Hearing Handicapped Children				
Assistant Director of Business Education				
Assistant Director of Classes for Children with Retarded Mental Development				
Assistant Director of Community Education				
Assistant Director of Curriculum Research				
Assistant Director of Early Childhood Education				
Assistant Director of Education of the Physically Handicapped (other than visually or acoustically handicapped)				
Assistant Director of Education of Socially Maladjusted Children (Junior Guidance Classes Program - Clinical)	25,710	26,845	27,980	29,115
Assistant Director of Education of Socially Maladjusted Children (Junior Guidance Classes Program - Educational)				
Assistant Director of Educational Program Research and Statistics				
Assistant Director of Educational Research				
Assistant Director of Education of the Visually Handicapped				
Assistant Director of English				
Assistant Director of English for Pupils Learning English as a Second Language				
Assistant Director of Foreign Languages				
Assistant Director of Guidance (Educational and Vocational)				
Assistant Director of Health and Physical Education				
Assistant Director of Home Economics				
Assistant Director of Industrial Arts				
Assistant Director of In-Service-Training	22,185	23,320	24,455	25,590
Assistant Director of Mathematics				
Assistant Director of Music				
Assistant Director of Related Technical Subjects in the Vocational High Schools				
Assistant Director of School Library Service				
Assistant Director of Science				
Assistant Director of Social Studies				
Assistant Director of Speech Improvement	25,710	26,845	27,980	29,115

Rates Effective

	October 1, 1971	October 1, 1972	October 1, 1973	October 1 1974
Assistant Director of Trade Subjects				
Supervisor of Art				
Supervisor, Audio-Visual Instruction				
Supervisor of Bi-Lingual Teachers in School and Community Relations				
Supervisor of Classes for Children with Retarded Mental Development	\$21,930	\$23,030	\$24,230	\$25,480
Supervisor of Classes for the Emotionally Disturbed				
Supervisor of Early Childhood Education				
Supervisor of Education of Acoustically Handicapped				
Supervisor of Education of Physically Handicapped (other than visually or acoustically handicapped)				
Supervisor of Education of Visually Handicapped				
Supervisor of Guidance (Educational and Vocational)	(See Borough Guidance Coordinator)			
Supervisor of Health and Physical Education				
Supervisor of Hearing Handicapped Children	21,930	23,030	24,230	25,480
Supervisor of Home Economics				
Supervisor of Industrial Arts				
Supervisor of Industrial Arts & Handicrafts for Physically Handicapped				
Supervisor of Motion Picture Production				
Supervisor of Music				
Supervisor of Program Production: Instructional Radio				
Supervisor of Program Production: Instructional Television				
Supervisor of Continuing Education				
Supervisor of School Gardening				
Supervisor of School Library Service				
Supervisor of Speech Improvement				
Administrator of a Bureau of Child Guidance Center	24,540	25,675	26,810	27,945
Borough Guidance Coordinator (Educational and Vocational) and/or Supervisor of Guidance (E & V)	23,205	24,345	25,480	26,615
Divisional Administrative Assistant	26,000	27,135	28,270	29,405
Editor of Curriculum Publications	23,210	24,345	25,480	26,615
Coordinator of Curriculum Periodicals	23,210	24,345	25,480	26,615
Supervisor of School Psychologists and Supervisor of School Social Workers	23,210	24,345	25,480	26,615
Educational Facilities Standards Coordinator	18,050	19,045	20,040	21,035

SECTION II

Rates Effective

	Year of Service as Such			
	One	Two	Three	Four
Director of All Day Neighborhood School Program	\$29,100	\$30,235	\$31,370	\$32,505
Director of Art	29,100	30,325	31,370	32,505
Director of Attendance	34,295	35,000	35,000	35,000
Director of Audio-Visual Instruction	29,100	30,235	31,370	32,505
Director of Broadcasting	30,100	31,235	32,370	33,505
Director, Bureau of Child Guidance	34,295	35,000	35,000	35,000
Director of the Bureau of Children with Retarded Mental Development				
Director of Bureau of Hearing Handicapped Children				
Director of Business Education				
Director of Community Education Centers				
Director of Continuing Education				
Director of Cooperative Education				
Director of Early Childhood Education				
Director of the Education of the Physically Handicapped (other than visually or acoustically handicapped)				
Director of Education of Socially Maladjusted Children				
Director of the Education of the Visually Handicapped				
Director of Educational Staff Recruitment	29,100	30,235	31,370	32,505
Director of Elementary School Reading Clinics				
Director of English				
Director of Foreign Languages				
Director of Guidance				
Director of Health and Physical Education				
Director of Home Economics				
Director of Industrial Arts				
Director of In-Service-Training	23,230	24,365	25,500	26,635
Director of Mathematics				
Director of Music				
Director of School Library Service	29,100	30,235	31,370	32,505
Director of School Plant Planning (Educational Facilities)				
Director of Science				
Director of Social Studies				
Director of Specially Funded Programs - Bureau of Supplies	23,560	24,695	25,830	26,965
Director of Speech Improvement	29,100	30,235	31,370	32,505
Director of Trade and Technical Subjects				
Director of Zoning				
Chief School Psychiatric Social Worker and Chief School Psychologist	25,710	26,845	27,980	29,115

Rates Effective

	Year of Service as Such			
	One	Two	Three	Four
Assistant Administrative Director	\$24,395	\$25,530	\$26,665	\$27,800
Assistant Director of Administrative & Budgetary Research				
Assistant Director of Art				
Assistant Director of Audio-Visual Instruction				
Assistant Director of Audio-Visual Instruction (Technical Operations)	25,710	26,845	27,980	29,115
Assistant Director of Broadcasting (Programming and Production)				
Assistant Director of Broadcasting (Technical Operations)				
Assistant Director Bureau of Child Guidance	30,000	31,135	32,270	33,405
Assistant Director of Bureau for Hearing Handicapped Children				
Assistant Director of Business Education				
Assistant Director of Classes for Children with Retarded Mental Development				
Assistant Director of Community Education				
Assistant Director of Curriculum Research				
Assistant Director of Early Childhood Education				
Assistant Director of Education of the Physically Handicapped (other than visually or acoustically handicapped)				
Assistant Director of Education of Socially Maladjusted Children (Junior Guidance Classes Program - Clinical)	25,710	26,845	27,980	29,115
Assistant Director of Education of Socially Maladjusted Children (Junior Guidance Classes Program - Educational)				
Assistant Director of Educational Program Research and Statistics				
Assistant Director of Educational Research				
Assistant Director of English				
Assistant Director of English for Pupils Learning English as a Second Language				
Assistant Director of Foreign Language				
Assistant Director of Guidance (Educational and Vocational)				
Assistant Director of Health and Physical Education				
Assistant Director of Home Economics				
Assistant Director of Industrial Arts				
Assistant Director of In-Service-Training	22,185	23,320	24,455	25,590
Assistant Director of Mathematics				
Assistant Director of Music				
Assistant Director of Related Technical Subjects in the Vocational High Schools				
Assistant Director of School Library Service				
Assistant Director of Science				
Assistant Director of Social Studies				
Assistant Director of Speech Improvement	25,710	26,845	27,980	29,115
Assistant Director of Trade Subjects				
Assistant Director of the Education of the Visually Handicapped				

Rates Effective

	Year of Service as Such			
	One	Two	Three	Four
Assistant Director of Attendance	\$30,000	\$31,135	\$32,270	\$33,405
Supervisor of Art	21,930	23,030	24,230	25,480
Supervisor of Audio-Visual Instruction				
Supervisor of Bi-Lingual Teachers in School and Community Relations				
Supervisor of Classes for Children with Retarded Mental Development				
Supervisor of Classes for the Emotionally Disturbed				
Supervisor of Early Childhood Education				
Supervisor of Education of Acoustically Handicapped				
Supervisor of Education of Physically Handicapped (other than visually or acoustically handicapped)				
Supervisor of Education of Visually Handicapped				
Supervisor of Guidance (Educational and Vocational)	(See Borough Guidance Coordinator)			
Supervisor of Health and Physical Education	21,930	23,030	24,230	25,480
Supervisor of Hearing Handicapped Children				
Supervisor of Home Economics				
Supervisor of Industrial Arts				
Supervisor of Industrial Arts & Handicrafts for Physically Handicapped				
Supervisor of Motion Picture Production				
Supervisor of Music				
Supervisor of Program Production: Instructional Radio				
Supervisor of Program Production: Instructional Television				
Supervisor of Continuing Education	21,930	23,030	24,230	25,480
Supervisor of School Gardening				
Supervisor of School Library Service				
Supervisor of Speech Improvement				
Administrator of a Bureau of Child Guidance Center	24,540	25,675	26,810	27,945
Borough Guidance Coordinator (Educational and Vocational) and/or Supervisor of Guidance (E & V)	23,210	24,345	25,480	26,615
Divisional Administrative Assistant	26,000	27,135	28,270	29,405
Editor of Curriculum Publications	23,210	24,345	25,480	26,615
Coordinator of Curriculum Periodicals	23,210	24,345	25,480	26,615
Supervisor of School Psychologist and Supervisor of School Social Worker	23,210	24,345	25,480	26,615
Educational Facilities Standards Coordinator	18,050	19,045	20,040	21,035

B. WELFARE BENEFITS

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1. Choice of Health Plans

The Board agrees to arrange for, and make available to each supervisor, a choice of health and hospital insurance coverage from among designated plans and the Board agrees to pay the full cost of such coverage.

2. Supplemental Benefits

The Board will provide funds effective October 1, 1972, at the rate of \$369.00 per year on a pro-rata basis per month on behalf of each supervisor for the purpose of making available for each supervisor supplemental welfare benefits under a plan to be devised and established jointly by representatives of the C.S.A. and of the Board.

Effective October 1, 1973, the Board will provide for such purpose further additional funds at the rate of \$30.00 per year per supervisor, for a total of \$399.00 per year.

Effective October 1, 1974, the Board will provide further additional funds at the rate of \$30.00 per year per supervisor for additional welfare benefits, for a total of \$429.00 per year.

3. Annuity Fund

- a. The Board shall contribute at the rate of \$550.00 per year to the Teachers' Retirement System to be credited monthly to the annuity account of each supervisor who is at the maximum step of his salary schedule.

- b. The Board will seek such legislation as may be necessary to provide for these annuity contributions. In the event that necessary enabling legislation is not enacted, the Board will pay monthly to each supervisor covered in the preceding paragraph the rate specified above.

ARTICLE IV

PENSION AND RETIREMENT PROGRAM

As provided in legislation, jointly sponsored by the Board of Education and the C.S.A. which was enacted in the 1970 session of the New York State Legislature, the benefits of the Pension and Retirement Program, limited to supervisors of the New York City Board of Education who are contributors to the New York City Teachers' Retirement System, and who are in the collective bargaining unit for which this collective bargaining contract was entered into and signed by the New York City Board of Education and C.S.A., are:

A. LAST YEAR'S AVERAGE SALARY

Retirement benefits are based on the last years's salary.

B. NEW PENSION PLAN BENEFITS

1. Improved Pension Plan

a. Retirement Eligibility

A member may retire on completion of a minimum of 20 years of City service, benefit payments to be deferred until the date on which he would have completed 25 years of

service if he had remained in the employ of the Board of Education, but not earlier than his attainment of age 55.

b. Benefits

For the first 20 years of City service, a retirement allowance equal to $1/2$ of final year's salary, which will include an annuity based on the member's accumulated contributions, a pension for ITHP and a City Pension which provides the balance of the retirement allowance ($1/2$ final year's salary).

For each year of total service in excess of the required 20 years, an additional allowance consisting of, (a) a pension based on 1.2% of final year's salary for each year of such additional service prior to July 1, 1970 and 1.7% of final year's salary for each such additional year of service subsequent to June 30, 1970; (b) an annuity based on contributions in excess of those required during the 20 year period prior to eligibility for retirement; and (c) a pension based on ITHP accumulated subsequent to the member's 20th year of service.

C. MEMBERS CONTRIBUTION

Members shall contribute at a rate calculated to provide an annuity equal to $1/4$ th of the retirement allowance at the completion of 20 years of service and shall not be required to contribute thereafter.

For members of the system on the effective date of this legislation, con-

tribution rates shall be based on equated age at time of entry and computed⁷⁰ as though this plan had always been in effect.

D. AGE 55 REVISED SERVICE FRACTION PLAN

1. Members who do not elect "Improved Pension Plan" may retire at age 55 regardless of years of service. Benefit payments become payable immediately upon retirement.
2. A retirement allowance consisting of an annuity based on the member's accumulated deductions at time of retirement, an ITHP pension based on ITHP accumulations at the time of retirement and a pension based on 1.2% of the final year's salary for each year of service rendered prior to July 1, 1970 and 1.53% of final year's salary for each year of service rendered subsequent to June 30, 1970.
3. Rates of contribution shall be the same as would be required under the existing 1% - age 55, 25 years of service retirement plan.

E. INCREASED -TAKE-HOME-PAY

Beginning July 1, 1970, the Increased-Take-Home-Pay contributions shall be fixed at 5%.

F. VESTED RETIREMENT RIGHTS

Members of the Age 55 Revised Service Fraction Plan shall be eligible for deferred benefits after 15 years of accredited service, 5 of which must immediately precede discontinuance of service.

The deferred retirement which vests immediately upon resigna-

tion shall become payable at age 55, providing the member has not withdrawn his accumulated contribution. At the time the deferred retirement allowance becomes payable, the member shall receive a retirement allowance consisting of (a) an annuity based on the member's accumulated deductions at time of retirement, (b) ITHP pension based on ITHP accumulations at retirement and, (c) a pension based on 1.2% of the final year's salary for each year of service rendered prior to July 1, 1970 and 1.53% of final year's salary for each year of service rendered subsequent to June 30, 1970.

G. PRESUMPTIVE RETIREMENT (DEATH GAMBLE)

The existing provisions of the Death Gamble Law will be applicable to members who die in service after having become eligible for service retirement under the plan elected by the member, if greater than the ordinary death benefit.

H. ORDINARY DISABILITY RETIREMENT

1. Eligibility

Any member who becomes disabled on completion of at least 10 years of City service will be eligible for a disability retirement. On retirement for disability he will be entitled to (a) a pension of 1.2% of final year's salary for service accredited prior to July 1, 1970 and 1.53% of final year's salary for each year of service accredited subsequent to June 30, 1970 (b) an annuity based on the member's accumulated deductions at retirement, and (c) a pension for Increased-Take-Home-Pay

based on the member's Increased-Take-Home-Pay accumulations at retirement.

I. ACCIDENTAL DISABILITY

1. Members who incur a service-connected disability shall be eligible to retire for accidental disability retirement regardless of service. The member shall be entitled to (a) a pension equal to 3/4th's of the final 5 year average salary, (b) an annuity based on the member's accumulated deductions at retirement, and (c) a pension for Increased-Take-Home-Pay based on the member's ITHP accumulations at retirement.

J. DEATH BENEFIT

1. A person who dies before becoming eligible for retirement is entitled to the following benefits:
 - a. A member with less than 10 years of City service:

A benefit equal to (a) an amount equal to salary for six month period immediately preceding death, (b) his accumulated deductions and (c) his reserve for ITHP.
 - b. A member with at least 10 but less than 20 years of City Service:

A benefit equal to (a) an amount equal to his salary for the 12 month period immediately preceding death, (b) his accumulated deductions and, (c) his reserve for ITHP.
 - c. A member with 20 years or more of City service:

A benefit equal to (a) an amount equal to twice his final

year's salary, (b) his accumulated deductions and (c) his
reserve for ITHP.

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K. ADDITIONAL PENSION ITEMS

With respect to pensions and retirement, the Board hereby affirms its support of the following program:

1. Supervisors shall be entitled to credit for all teaching and supervisory service in New York City or elsewhere rendered before entry into the Teachers' Retirement System of the City of New York.
2. The Teachers' Retirement Board should be adequately staffed to provide prompt and efficient service.

ARTICLE V

WORK YEAR

A. SCHOOL SUPERVISORS

The established work year for school supervisors shall be modified as follows:

1. School supervisors shall be in attendance on the four week days preceding the Wednesday before the opening of schools in September.
2. School supervisors shall also be in attendance on four non-school days during the school year. These days shall be scheduled at times other than during the Christmas and Easter recesses.

B. HEADQUARTERS AND DISTRICT OFFICES SUPERVISORS

1. The work year for Directors, Assistant Directors, Assistant Administrative Directors and other employees in titles applicable to headquarters and district offices and school supervisors on assignment to headquarters and district offices shall commence on September 1 of each year and end on the following August 31.
2. Directors, Assistant Directors, Assistant Administrative Directors and other employees in titles applicable to headquarters and district offices shall be granted each work year 31 days vacation to be scheduled during the Christmas recess, the Easter recess, the summer vacation period, and such other periods as can be arranged mutually with the bureau or office head.
3. School supervisors on assignment to district or headquarters offices shall have the same work year as that provided in the preceding paragraph for Directors except that the following shall apply to those supervisors on assignment as of September 1, 1973, who advised the Board as of September 30, 1973, that they desired to return to a school.

The Board will assist such supervisors in their efforts to find a school assignment prior to the close of the 1973-74 school year. If the supervisor does not find a school assignment, and has not refused any school assignment that may have been offered

to him, prior to the close of the 1973-74 school year the supervisor shall have the same vacation time as he previously had except that such time shall not extend beyond August 31, 1974. Beginning on September 1, 1974, such supervisors shall have the same work year as Directors.

C. EMPLOYEES IN THE TITLE "SUPERVISOR"

The established work year for employees in the title "Supervisor" (subject area supervisors, special area supervisors and other supervisors in bureaus) shall be modified as follows:

The employee shall serve eight additional days to be scheduled for non-school days. In addition to the eight days, he may also be required to serve a week during the Christmas recess or the Easter recess or the summer vacation period.

D. COMPENSATORY TIME

A supervisor in headquarters or district offices assigned to work with school supervisors on any of the four non-school days of service of school supervisors under Section A 2 of this Article shall be granted compensatory time for such work, if those non-school days are not regular work days for the headquarters or district office supervisor.

ARTICLE VISPECIAL WORKING CONDITIONSA. RELIEF FROM NON-SUPERVISORY DUTIES IN SCHOOLS

Except in the case of emergency conditions, intermediate supervisors shall not be assigned on a continuous basis to non-supervisory duties in connection with lunchroom operations, yard and stairway patrol. The Board will make every effort to obtain budgetary funds adequate to insure that appropriate personnel will be provided to relieve supervisors of such routine non-supervisory duties as taking inventory of material, distribution of supplies and textbooks, messenger service, and bus duties. This section does not preclude the assignment of intermediate supervisors to the supervisory responsibility of maintaining good order and discipline.

B. SUBJECT AREA SUPERVISOR ASSIGNMENTS

A subject area supervisor whose assignment to a district or bureau office is terminated shall not be replaced in that subject area assignment by a person not licensed as a supervisor.

C. PER SESSION EMPLOYMENT OF SUPERVISORS

When supervisory positions in the Board of Education are created for Federal, State or City projects to be conducted outside of school hours, the following practices will prevail.

1. Only members of the supervisory staff of the district concerned shall be eligible for assignment to the position, if qualified. If qualified supervisors are not available in the

district after a full recruitment effort by the district or community superintendent, or if the position requires unique qualifications, the position may be filled from outside the district.

2. When such position is limited to an individual school, in which only teachers and children are to be supervised, supervisors in the school below the level of principal shall be given notice by the principal of such position and shall have priority of assignment to it.
3. When such position includes several schools or requires the supervision of other supervisors, principals of the schools involved shall be given notice of such position and have priority of assignment.

D. SUPERVISION OF TRAINING POSITIONS

It is understood that the principal shall have general supervision of teacher-trainers assigned to a school and that other supervisors shall exercise direct supervision over such teacher-trainers.

E. RESPONSIBILITY FOR HEALTH SERVICES

In order to relieve supervisors of the responsibility of making medical decisions, every effort will be made to insure that appropriate medical personnel are assigned or available to each school.

F. ALLOWANCES FOR CHAIRMEN

1. A chairman of department who is assigned two or more departments or whose department includes staff in a main building

and an annex shall receive an additional teaching exemption allowance of five periods per week.

2. (Effective February 1, 1970) Stenographic services will be provided to high school chairmen on the basis of one-half day per week of such services for each chairman.

G. PROFESSIONAL CONFERENCES

Supervisors shall be granted a maximum of four days per year excused absence with pay for the purpose of attendance at professional meetings or conferences. Such excused absence shall be approved by the immediate supervisor concerned if not inconsistent with the educational and supervisory needs of the bureau or school involved.

H. BUREAU CONFERENCES

Except in unusual circumstances, bureau supervisors shall be permitted to attend one bureau meeting each month. Directors shall give five days notice of such meetings to district and community superintendents and permission to attend shall not be unreasonably withheld.

I. USE OF PERSONAL CARS

Supervisors, except those who work primarily in midtown Manhattan, if given authorization to use their personal cars on official business in accordance with criteria, procedures and other requirements of generally applicable rules and regulations issued by the Chancellor shall be reimbursed at the rate of \$.14 per mile.

It is understood that this provision is subject to the continuing budgetary authority of the Board to permit use of personal cars on official business.

J. SUPERVISOR FILES

Official supervisor files in a school shall be maintained under the following circumstances:

1. No material derogatory to a supervisor's conduct, service, character or personality shall be placed in the files unless the supervisor has had an opportunity to read the material. The supervisor shall acknowledge that he has read such material by affixing his signature on the actual copy to be filed, with the understanding that such signature merely signifies that he has read the material to be filed and does not necessarily indicate agreement with its content. However, an incident which has not been reduced to writing within three months of its occurrence, exclusive of the summer vacation period, may not later be added to the file.
2. The supervisor shall have the right to answer any material filed and his answer shall be attached to the file copy.
3. Upon appropriate request by the supervisor, he shall be permitted to examine his files.
4. The supervisor shall be permitted to reproduce any material in his files.
5. Material will be removed from the files when a supervisor's claim that it is inaccurate or unfair is sustained.

ARTICLE VIIGENERAL BENEFITA. REIMBURSEMENT FOR MEDICAL EXPENSES

Supervisors shall be reimbursed by the Board for reasonable medical expenses, not exceeding \$750, incurred because of injuries in the line of duty, to the extent that such expenses are not covered by insurance.

B. VACATION PAY CREDIT AND SERVICE CREDIT

1. The estate of a supervisor who dies during the term of this agreement shall receive a pro rata amount, based on the length of his employment during the school year, of the vacation pay he would have received had he been employed during the entire school year. This section shall not apply to those supervisors who are presumed to have retired on the day immediately preceding their death pursuant to Section B 20-410 of the Administrative Code of the City of New York, as amended.
2. A regularly appointed supervisor who has rendered actual service during any school year covered in part by leave of absence for maternity and child care shall be given credit for salary increment purposes for any pro rata vacation pay received for such service.

C. SKIN TEST

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The Department of Health of the City of New York, the Board, and the CSA have agreed to the modification of present compulsory mass X-Ray testing of supervisors as follows:

Supervisors will be given a skin test. The skin test will be administered by the Department of Health. Where a skin test result proves to be positive, the Board may require an X-Ray test. An enabling resolution to this effect was adopted by the Department of Health on May 6, 1962.

D. REQUESTS FOR MEDICAL EXAMINATION OF SUPERVISORS

The report of the immediate superior requesting examination of a supervisor pursuant to Education Law Section 2568 shall be made in duplicate. A copy of the report shall be forwarded to the supervisor.

E. ASSISTANCE IN ASSAULT CASES

1. All cases of assault suffered by supervisors in connection with their employment shall be reported by the immediate supervisor to the Executive Director for Personnel and to the Office of the Counsel.
2. The Office of the Counsel shall inform the assaulted supervisor immediately of his rights under the law and shall provide such information in a written document.
3. The Office of the Counsel shall notify the assaulted supervisor of his readiness to assist the supervisor as follows: by obtaining from police and from the principal or bureau

head relevant information concerning the culprits; by accompanying the supervisor in court appearances; and by acting in other appropriate ways as liaison between the supervisor, police and the courts. This assistance is intended to apply solely to the criminal aspect of any case arising from such assault.

4. Should the Office of Counsel fail to provide an attorney to appear with the supervisor in Family Court, the Board will reimburse the supervisor if he retains his own attorney for only one such appearance in an amount up to \$40.00.

F. PAY DURING MILITARY SERVICE

Supervisors on regular appointment who enter the military service shall be on leave of absence with pay during the first thirty days of such service unless the Board is otherwise required to make payment of salary during such military service.

G. EXCUSE FOR SELECTIVE SERVICE EXAMINATION

Supervisors called for selective service physical examination shall be excused without loss of pay for such purpose.

H. DAMAGE OF DESTRUCTION OF PROPERTY

1. Supervisors shall not be held responsible for loss within the school of school property or children's property when such loss is not the fault of the supervisor. This does not exonerate the supervisor from responsibility for school property in his charge.

2. The Board of Education will reimburse supervisors for loss of damage or destruction, while on duty in a school or district office of personal property of a kind normally worn to or brought into a school or district office.

Supervisors will also be reimbursed for loss or damage or destruction, while on official duty on field assignments, of personal property of a kind normally worn or carried on duty when such loss results from force or violence reported to the police.

3. Reimbursement will be limited to a total of \$100 in any school year; when the supervisor has not been negligent, to the extent that such loss is not covered by insurance.
4. The term "personal property" shall not include cash. The terms "loss," "damage" and "destruction" shall not cover the effects of normal wear and tear and use.

I. PAYMENT FOR JURY DUTY

Supervisors who are required to serve on jury duty will receive full salary during the period of such service, subject to their prompt remittance to the Board of an amount equal to the compensation paid to them for such jury duty.

J. SUMMONS, DISCHARGE, OR REVIEW

1. Supervisors summoned to the office of a district superintendent or to the Office of Personnel shall be given forty-eight hours notice and a statement of the reason for the summons, except

where an emergency is present or where considerations of confidentiality are involved.

Whenever a supervisor is summoned for an interview for the record which may lead to disciplinary action, he shall be entitled to be accompanied by a representative who is employed by the city school system or by an employee of CSA who is not a lawyer and he shall be informed of this right. However, where the Superintendent concerned or the Office of Personnel permits an attorney to represent any participant in the interview, the supervisor shall be entitled to be represented by an attorney. An interview which is not held in accordance with these conditions shall not be considered a part of the supervisor's personnel file or record and neither the fact of the interview nor any statements made at the interview may be used in any subsequent Board proceeding involving the supervisor. It is understood that informal conferences, such as those between a district superintendent and a supervisor, or the Office of Personnel and a supervisor, for professional improvement, may be conducted off the record and shall not be included in the employee's personnel file or record.

2. Supervisors on probation shall be entitled to the review procedures before the Chancellor as prescribed in Section 105a of the By-laws of the Board of Education.

3. The following procedures shall apply to the dismissal of a supervisor who on or after August 29, 1973, has completed one calendar year of service in his assignment and is not, or has not been, required by law to serve a probationary period:
- a. The Community Board or the appropriate City Board official shall, at the time of dismissal, submit to the supervisor in writing a notice of dismissal together with a statement of reasons.
 - b. The supervisor may appeal his dismissal by submitting to the Chancellor a written notice of appeal no later than 10 days after receiving the notice of his dismissal. The notice of appeal to the Chancellor shall contain an answer to the statement of reasons.
 - c. The Chancellor shall, within 10 days after receipt of the notice of appeal, designate a committee to hear the appeal. The hearing shall be held as promptly as possible following the designation of the committee. The supervisor shall receive written notice of the time and place of the hearing by mail at least one week before the date of the hearing. The notice shall inform the supervisor that he is entitled to appear in person, to be accompanied and advised by any person of his choice, to be confronted by witnesses, to call witnesses and to introduce any relevant evidence. The attendance of an adviser or witness who

is an employee of the Board of Education shall not be deemed absence from official duty, but such persons shall not absent themselves from school duty except pursuant to such rules as the Chancellor shall prescribe.

No person in the employ of the Board of Education shall request or accept directly or indirectly any remuneration or other consideration for service as adviser or witness. A record tape or disc shall be kept of the proceedings where practicable in the form of a recording.

In the event that sound recording is not available or breaks down, minutes shall be taken of the proceedings and said minutes shall be available to the supervisor upon reasonable written notice and upon payment to the Board of Education of fifty cents a folio.

The supervisor shall be entitled to examine exhibits and, in addition, shall be entitled to receive a duplicate of the sound recording discs or tapes of the proceedings at cost.

4. The committee shall review the matter and submit its findings to the Chancellor within 20 days of the hearing.
5. The Chancellor shall make the final decision on the appeal for the Board of Education within 20 days of receipt of the committee's findings.

K. WITHDRAWAL OF RESIGNATION AND SUBSEQUENT REAPPOINTMENT

1. Requests for withdrawal of resignation on the part of supervisors who attained permanent tenure prior to their resignation shall be effectuated, subject only to medical examination and the approval of the Chancellor, provided that application for such withdrawal of resignation is made on or before the opening of school in September next following five years after the effective date of resignation. In all other cases of withdrawal of resignation, the requirements of Section 255 of the Board of Education By Laws shall continue in effect.
2. Supervisors who resign and subsequently are reappointed shall be placed in the salary step at which they were at the time of resignation and shall be given the sick leave "bank" and sabbatical leave rights which they held at the time of resignation.

L. EXCESSING RULES

The following excessing rules shall be adhered to in all divisions: If a city-wide excess condition causes a layoff of staff in any licensed position, the provisions of law will be followed to determine the staff member to be laid off, without fault and delinquency with the understanding that said member of staff is to be placed on a preferred list. Such excessed staff member shall be the last person appointed in the license on a city-wide basis.

- Rule 1. Within the school, district, bureau or other organizational unit, the supervisor with the latest date of appointment within license will be the first to be excessed, irrespective of probationary or permanent license. A supervisor on probation should not be excessed more than once during his probationary period of service.
- Rule 2. An intermediate supervisor who has been excessed from a school in a district to another school in the same district may request an opportunity to return to the school from which he has been excessed if within a year a vacancy should occur in his license in that school. Such a request will have priority over any other transfer or appointment to that vacancy.
- Rule 3. All leave-of-absence time for which salary credit is granted will not affect the earliest date of appointment for purposes of excessing. All other leave-of-absence time without pay or time lost because of resignation and subsequent reappointment will affect the earliest date of appointment.
- Rule 4. Supervisors in excess in a school unit or district office under the jurisdiction of a community board must be placed in vacancies within the district to the fullest degree possible. For school units, districts, or bureaus under the jurisdiction of Central Board, supervisors in excess in a school or bureau must be placed in appropriate vacancies within the district or central office.

Rule 5. To minimize movement of personnel, excessed supervisors may be assigned when no other vacancies exist in the districts, within the district to appropriate openings resulting from leaves of absence without pay.

Rule 6. The Central Board has the responsibility for placing supervisors who are excessed from a school or community district office and cannot be accommodated by their own district, within budgetary limitations and if vacancies exist within the city. Where possible, the wishes of the supervisor will be taken into account in his placement by the Central Board.

Rule 7. When a supervisory position in Central Headquarters is abolished, the occupant of that position is excessed, and he shall be granted the same rights for placement as a supervisor who is excessed from a community district.

M. MEDICAL REPORT AND REVIEW

The report of the Medical Division on a supervisor who was called for medical examination shall, upon written request of the supervisor, be sent to the supervisor's physician.

A supervisor shall have the right to an independent evaluation by an ad hoc committee of physicians if the finding of the Medical Division to the Superintendent has resulted in: (1) placement of the supervisor on a leave of absence without pay for more than three months, or (2) termination of the supervisor's services, or (3) a recommendation

for disability retirement.

A request for an independent evaluation of the finding of the Medical Division shall be submitted in writing by the supervisor to the Office of Personnel within 5 school days of receipt of notice from the Office of Personnel that he has been placed on leave of absence or that his services have been terminated, or that he has been recommended for disability retirement.

The ad hoc committee shall consist of one physician selected by the supervisor, one physician selected by the Board of Education, and a third physician selected by the other two physicians.

The findings of the ad hoc committee shall be reduced to writing and submitted to the Chancellor as an advisory opinion.

The fee of the third physician will be shared equally by the supervisor and the Board of Education.

Failure by the supervisor to select a physician within 30 days of the receipt of notice from the medical division to do so, shall be deemed a withdrawal of the supervisor's request for an independent evaluation.

N. INFORMATION TO CSA

1. Lists of vacancies and any lists which may be established by the personnel division showing seniority of supervisors for purposes of implementing provisions of this agreement relating to transfer shall be made available to CSA. In individual cases relating to transfer, specific information

as to seniority will be made available to CSA.

2. Copies of all official Board circulars and directives shall be sent to CSA.

ARTICLE VIII

LEAVES OF ABSENCE AND SICK LEAVE

A. LEAVES OF ABSENCE WITHOUT PAY

1. Leaves of Absence Without Pay

Leaves of absence without pay shall be granted upon application to supervisors on regular appointment or assignment for the following purposes:

- a. study related to the supervisor's license field;
- b. study to meet eligibility requirements for a license other than that held by the supervisor.
- c. acceptance of a supervisory or teaching position in a foreign country for one year, with such leave renewable for an additional year. Such position shall be sponsored or approved by the Government of the United States.
- d. acceptance of a teaching or supervisory position in the City University or a college of the University of the State of New York for one year with such leave renewable for one year.

The Board will recommend to the Teachers' Retirement Board the granting of retirement credit for the duration of the afore-said leaves.

"Urgent needs" of the school to which the supervisor is assigned may be asserted by the Board as justifying a temporary denial of any application for leave without pay.

2. Leaves of Absence for C.S.A. Officers

Supervisors who are officers of the C.S.A. or who are appointed to its staff shall, upon proper application, be given a leave of absence without pay during the 1972-73 the 1973-74 and the 1974-75 school years for the purpose of performing legitimate duties for the C.S.A. Supervisors given leaves of absence without pay shall receive credit toward annual salary increments on the schedules appropriate to their rank. The Board agrees to recommend to the Teachers' Retirement Board that the time spent on leave of absence pursuant to this section be granted as service credit for retirement purposes and that the supervisors receiving such leave of absence be permitted to pay regular monthly contributions based upon their earnable salaries as members of the supervisory staff for the period of such leave.

No more than ten leaves of absence without pay shall be granted for each full school year.

B. CUMULATIVE ABSENCE RESERVE AND SICK LEAVE

1. Supervisors on regular appointment or assignment shall be granted absence refunds for illness on application, without a statement from a physician for a total of no more than ten days in any school year. Supervisors will be allowed to use three of such ten days of sick leave for personal business provided that reasonable advance notice is given to the head of the school.
2. A supervisor on regular appointment or assignment who has exhausted his cumulative sick leave may borrow up to 20 days of additional sick leave.
3. Sick leave privileges shall extend to the taking of annual physical checkups or the taking of annual laboratory tests.

Such absences shall be limited to one day in each school year.

4. Supervisors on regular appointment or assignment called to military duty will be credited upon their return with the same sick leave allowance for the period of their military service as they would have been entitled to in school service.
5. Supervisors serving in schools or while on official duty or field assignments, shall not suffer loss of sick bank days for absense due to illness from the following children's diseases: rubeola (measles), epedemic parotitis (mumps), and varicella (chicken pox). It is understood that this

paragraph does not apply to rubella (german measles).

6. Supervisors on regular appointment reinstated after retirement will be credited with the cumulative reserves remaining to their credit upon retirement.
7. Employees of the Board of Higher Education who transfer as regularly appointed supervisors to the Board shall have their cumulative reserves transferred and credited to them, but not in excess of the maximum number of days creditable in this system.
8. Supervisors who resign or retire shall, upon application, receive termination pay on the basis of one half of the unused sick leave accumulated after September 1967.

If the resignation or retirement becomes effective at any time other than the end of a school year, sick leave for the period of service during that school year shall be paid at the rate of one day for each two full months of service. The estate of a supervisor who dies during the term of this agreement shall receive termination pay calculated on the same basis. This paragraph shall not apply to those supervisors who are presumed to have retired on the day immediately preceding their death pursuant to Section B 20-410 of the Administrative Code of the City of New York as amended.

Absence for illness after September 1, 1967, will be charged on a day for day basis to any unused sick leave

accumulated prior to September 1, 1967.

Absence immediately prior to resignation shall be paid on the same basis as termination pay.

C. SABBATICAL LEAVES OF ABSENCE AND RETIREMENT-LEAVE-IN-LIEU OF-SABBATICALS

1. Supervisors on sabbatical leave of absence shall receive compensation at the rate of sixty (60) percent of the supervisor's regular salary. The sabbatical leave pay of supervisors who receive a bonus shall be based upon their annual salary and the amount of the annual bonus received.
2. a. Supervisors who became eligible for a sabbatical leave between August 31, 1971 and October 1, 1972, shall make application for such leave within two years of the date on which they became eligible.

Supervisors who become eligible for a sabbatical leave on or after October 1, 1972, shall make application for such leave within three years of the date on which they become eligible.

If application is not made within each of the applicable time limits specified in the preceding two paragraphs, or after the application is approved and the leave is not taken as approved, such sabbatical leave privilege will be forfeited.

- b. An application for a sabbatical leave made within the prescribed two or three year period as provided in subparagraph a above will be granted to an eligible applicant in accordance with Section 106, Subsection 9, of the By-Laws of the Board of Education and applicable regulations.
- 3. Supervisors aged 55 or over who are eligible for retirement benefits immediately upon retirement will be entitled to leave-in-lieu-of-sabbaticals under these conditions:
 - a. Supervisors who were eligible for one or more sabbatical leaves as of August 30, 1971, will be granted leave-in-lieu-of-sabbaticals in accordance with the following schedule:

4 or more sabbaticals	-	1 year of leave
3 sabbaticals	-	9 months of leave
2 sabbaticals	-	6 months of leave
1 sabbatical	-	3 months of leave
 - b. A supervisor who forfeits his sabbatical leave privilege as provided in paragraph 2a. above will be credited for that sabbatical leave with one and one-half months of leave-in-lieu-of-sabbatical, except that such credit shall not result in eligibility for a total of more than one year of leave-in-lieu-of-sabbaticals under this Section.
 - c. The period of a supervisor's leave-in-lieu-of-sabbaticals shall be reduced by one day for each sick day in excess of

30 days taken during the three year period immediately preceding the commencement of his retirement leave or in the case of those not entitled to retirement leave the three year period immediately preceding the commencement of his leave-in-lieu-of-sabbaticals. Sick days taken for a serious illness or injury that requires medical care in a hospital, or confinement in the employee's home or in a similar place or facility, for a period in excess of fourteen consecutive calendar days shall not be counted in such reduction, upon approval by the Medical Division of satisfactory evidence.

- d. Requests for leave-in-lieu-of-sabbaticals will be granted only if the supervisor has filed an application for retirement designating as the date on which his retirement is to become effective the date immediately following the expiration of the leave-in-lieu-of-sabbaticals to which he may be entitled.

Leave-in-lieu-of-sabbaticals will become effective immediately upon the expiration of retirement leave or, in the case of those not entitled to retirement leave, upon approval by the Office of Personnel.

During the period of his leave-in-lieu-of-sabbaticals the supervisor shall receive pension credit and he shall be compensated at the rate of 40 percent of his regular

salary. If he does not withdraw the application for retirement filed as required in the preceding subparagraph, he shall receive an additional sum equal to 60 percent of his regular salary payable as of the effective date of his retirement.

4. A supervisor who is granted a regular sabbatical leave may not receive a leave-in-lieu-of-sabbaticals for a period of five years from the expiration of such sabbatical leave. This limitation shall not apply to a sabbatical leave granted to a supervisor for reasons of serious illness after exhaustion of all his sick leave allowance.
5. Sabbatical leave privileges accumulated by a supervisor as of August 30, 1971, shall be credited to him only as leave-in-lieu-of-sabbaticals in accordance with the provisions of paragraphs 3 of this Section C. This limitation shall not apply to a sabbatical leave granted to a supervisor after August 30, 1971, and before his application for retirement, for reasons of serious illness after exhaustion of all his sick leave allowance. A sabbatical leave taken under the circumstances described in the preceding sentence will be deducted from the number of sabbatical leave privileges credited to the supervisor as leave-in-lieu-of-sabbaticals.

ARTICLE IXOPPORTUNITY FOR TRANSFER

Effective November 1, 1973, supervisors shall be given an opportunity for transfer from one district to another district or from one high school to another, in accordance with the following principles:

A. PRINCIPALS OF ELEMENTARY, INTERMEDIATE, JUNIOR HIGH SCHOOLS AND HIGH SCHOOLS

1. To be eligible for transfer a principal shall have completed five or more years of continuous service in title in the school from which the transfer is sought.
2. The community board and the community superintendent of the district to which the transfer is sought or the appropriate Assistant Superintendent for High Schools shall interview the five eligible applicants with the greatest seniority. Seniority is to be calculated on the basis of years of service in title, with each year in a special service school counting as one and one-half years.
3. Consent of the releasing district will not be required.

B. ASSISTANT PRINCIPALS (ADMINISTRATION) HIGH SCHOOLS
ASSISTANT PRINCIPALS (SUPERVISION) HIGH SCHOOLS; AND
ASSISTANT PRINCIPALS (SUPERVISION) INTERMEDIATE AND
JUNIOR HIGH SCHOOLS

1. To be eligible for transfer, the supervisor shall have completed five or more years of continuous service in title at the school from which the transfer is sought.
2. All eligible applicants up to a maximum of eight will be inter-

viewed by the receiving district or community superintendent, or the appropriate assistant superintendent for High Schools. If more than eight eligible persons apply the eight most senior applicants shall be interviewed.

3. If four or more eligible persons apply, selection shall be from among those applicants except that if more than eight eligible persons apply selection shall be from among the eight most senior applicants.

4. Consent of the releasing district will not be required.

C. INTERMEDIATE SUPERVISORS IN ELEMENTARY SCHOOLS AND ASSISTANT PRINCIPALS (ADMINISTRATION) INTERMEDIATE AND JUNIOR HIGH SCHOOLS:

1. To be eligible for transfer the supervisor shall have completed five or more years of continuous service in title in the school from which transfer is sought. Such service shall have been completed at the time he applies for transfer.

In the case of a school supervisor who was excessed into another school or into a district office or into Central Headquarters and was then directly assigned to a school in the district from which the transfer is sought, years of continuous service shall be determined by including his service in the school from which he was excessed or in the district office or in Central Headquarters while in excess. A supervisor who under the excessing rules provided in Article VII returns to the school from which he was excessed within one year shall be

considered to have had "continuous service" in that school.

A supervisor on assignment to a district office or Headquarters shall be eligible for transfer to a school if he had completed five or more years of continuous service in title in a school immediately preceding his assignment to the district office or to Headquarters.

2. The following procedure shall apply to transfers:

- a. An eligible supervisor desiring a transfer shall apply for transfer by notifying the Office of Personnel that he desires to transfer to any vacancy in title which may occur in a particular district during the following school year. Application for transfer may be made to only one district in any school year.
- b. Applications for transfer shall be received by the Office of Personnel no later than the April 20 immediately preceding the school year for which application is made, except that those desiring transfer during the period November 1, 1973, to the end of the 1973-1974 school year shall make application to the Office of Personnel by December 21, 1973.
- c. Transfer Lists
An elementary school district transfer list shall be established by the Office of Personnel for a district if ten or more eligible supervisors apply for transfer to

elementary schools in that district.

An Intermediate and Junior High School District transfer list shall be established if eight or more eligible supervisors apply for transfer to intermediate or junior high schools in that district.

Transfer lists established by the Office of Personnel shall be sent to the particular districts by May 10, preceding the school year for which the transfer list is effective, except that transfer lists established for the period November 1, 1973, to the end of the 1973-1974 school year shall be published as soon as possible after November 1, 1973. CSA shall receive a copy of such lists.

Where a district transfer list is established vacancies that occur in the district during the school year shall be filled in accordance with the following provisions.

d. Interview and Selection from Transfer List
Elementary Schools

1. When a vacancy occurs in a district for which a transfer list is established for elementary schools the district shall interview the applicants on the transfer list, except as provided in subparagraph 3 below. Where there are more than ten applicants at least ten shall be interviewed.
2. Selection of a supervisor to fill a vacancy shall be made

from among those on the transfer list except as provided in subparagraph 3.

3. When the number of available applicants falls below nine the transfer list shall cease to be effective under this Section. If one applicant refuses to accept a transfer his refusal shall not be deemed to reduce the number of available applicants remaining on the list. Refusal by two or more applicants of transfers shall result in all refusals being counted to reduce the number of available applicants.
4. The district shall not be required to fill more than one vacancy from the same transfer list in the same school.

e. Interview and Selection From Transfer Lists - Intermediate and Junior High Schools

1. When a vacancy occurs in a district for which a transfer list is established for intermediate and junior high schools the district shall interview the applicants on the transfer list except as provided in subparagraph 3 below. Where there are more than eight applicants at least eight shall be interviewed.
2. Selection of a supervisor to fill a vacancy shall be made from among those on the transfer list except as provided in subparagraph 3 below.
3. When the number of available applicants falls below

seven the transfer list shall cease to be effective under this Section. If one applicant refuses to accept a transfer his refusal shall not be deemed to reduce the number of available applicants remaining on the list. Refusal by two or more applicants of transfers shall result in all refusals being counted to reduce the number of available applicants.

4. A district shall not be required to fill more than two vacancies from the same transfer list in the same school.

f. Declinations

An applicant on a transfer list who declines a transfer shall be disqualified from consideration for transfer to that district for the term of this agreement and shall be barred for the term of this agreement from applying for a transfer to any other district for the next school year.

g. Vacancies

Vacancies required to be filled from the transfer list shall be filled within six school months of the occurrence of the vacancy.

h. Consent of the releasing district will not be required.

Administrative procedures for the effectuation of these provisions are to be formulated by the Board in consultation with the CSA.

GRIEVANCE PROCEDURE

It is the declared objective of the parties to encourage the prompt and informal resolution of employee complaints as they arise and to provide recourse to orderly procedures for the satisfactory adjustment of complaints.

A. DEFINITION

1. The term "grievance" shall mean:

- a. A complaint by a supervisor covered by this Agreement that there has been as to him a violation, misinterpretation or inequitable application of any of the provisions of this Agreement or of the Memorandum of Understanding between the Board and CSA dated October 1, 1972.
- b. A complaint by CSA involving alleged misapplication or misinterpretation of this Agreement or of the Memorandum of Understanding between the Board and CSA dated October 1, 1972.

B. ADJUSTMENT OF GRIEVANCES

Grievances shall be presented and adjusted in the following manner:

FIRST LEVEL - ALL SUPERVISORS

A supervisor shall within a reasonable time following the act or condition on which his complaint is based discuss the matter with his immediate supervisor in an effort to resolve the problem informally as promptly as possible. It is understood that, if the complaint is resolved

informally, no record of the procedures at this level shall be made or kept without the written consent of the aggrieved supervisor.

SECOND LEVEL - SUPERVISORS OTHER THAN PRINCIPALS

If the complaint has not been resolved informally at the first level, within 30 days of the initial informal discussion with his immediate supervisor, the grievant may file a written grievance with the appropriate Community or Assistant Superintendent, the Bureau Director or other appropriate Board official at the next higher level of supervision. Where the grievant is not represented by CSA, he shall file a copy of the grievance with CSA at the same time as he files his grievance at this level.

Within ten (10) school days following receipt of the grievance, a conference shall be called by the supervisor with whom the grievance is filed with a view to arriving at a mutually satisfactory resolution of the complaint. Such conference shall be called on not less than two (2) school days' written notice to the grievant, his immediate supervisor, and CSA. The grievant shall be entitled to representation at the conference by CSA or by a supervisor of his choice in the New York City school system. Where the grievant is not represented by CSA, CSA shall be permitted to attend the conference and present its views.

If no mutually satisfactory resolution has been reached at the conference within five (5) school days following the conference, the supervisor with whom the grievance is filed shall communicate his written decision to the grievant and his representative, to his immediate supervisor, and to CSA.

THIRD LEVEL - SUPERVISORS OTHER THAN PRINCIPALS

If the grievance is not resolved at the Second Level, the grievant may, within fifteen (15) school days after receipt of the decision of the second-level supervisor, appeal in writing to the Chancellor. The appeal shall set forth the basis for the grievance and the reasons for the appeal.

Within fifteen (15) school days following receipt of the appeal, and on not less than two (2) days' written notice to all those who participated in the second-level conference, a conference shall be called by the Chancellor or his designee with a view to arriving at a mutually satisfactory resolution of the complaint. The grievant shall be entitled to representation by CSA or a supervisor of his choice in the New York City school system at the conference. Where the grievant is not represented by CSA, CSA shall be permitted to attend the conference and present its views.

Within twenty (20) school days following the conference, the Chancellor or his designee shall communicate his written decision to the grievant, the supervisors who attended the third step conference and to CSA.

SECOND LEVEL - PRINCIPALS

Where the grievant's immediate supervisor is a district or assistant superintendent, the written grievance shall be filed directly with the Chancellor within 30 days of the initial informal discussion with the grievant's immediate supervisor. Within ten (10) school days follow-

ing receipt of the grievance a conference shall be called by the Chancellor or his designee with a view to arriving at a mutually satisfactory resolution of the complaint. Such conference shall be called on not less than two (2) school days' written notice to the grievant, his immediate supervisor and CSA. The grievant shall be entitled to representation at the conference by CSA or by a supervisor of his choice in the New York City school system. Where the grievant is not represented by CSA, CSA shall be permitted to attend the conference and to present its views. If no mutually satisfactory resolution has been reached at this conference, within twenty (20) school days following the conference, the Chancellor shall communicate his written decision to the grievant and his representative, his immediate supervisor and to CSA.

GRIEVANCES INITIATED BY CSA

CSA may initiate a grievance as defined in paragraph A 1 b above at the level of a district superintendent, an assistant superintendent or the Chancellor as may be appropriate.

C. ARBITRATION

A grievance which has not been resolved at the level of the Chancellor may be submitted to an arbitrator.

A grievance may not be submitted to an arbitrator unless a decision has been rendered by the Chancellor under the grievance procedure, except in cases where, upon expiration of the twenty-day time limit for decision, the aggrieved supervisor or CSA filed notice with the Chancellor of intention to submit the grievance to arbitration and

no decision was issued by the Chancellor within twenty school days after receipt of such notice. The supervisor may proceed personally or through CSA or any other representative of his choice. Where the supervisor is not represented by CSA, CSA shall be given timely notice of the submission to arbitration and CSA shall be permitted to submit its views to the arbitrator.

The proceeding may be initiated by filing with the Board and the American Arbitration Association a notice of arbitration. The notice shall be filed within ten school days after receipt of the decision of the Chancellor or, where no decision has been issued in the circumstance described above, within three days following the expiration of the twenty-day period provided above. The notice shall include a brief statement setting forth precisely the issue to be decided by the arbitrator and the specific provision of the agreement involved.

The American Arbitration Association shall appoint one of a panel of three arbitrators to be designated by mutual agreement of the parties, to serve in rotation for any case or cases submitted.

The voluntary labor arbitration rules of the American Arbitration Association shall apply to the proceeding insofar as they relate to the selection of the arbitrator, the hearings and fees and expenses.

The arbitrator shall issue his decision not later than 30 days from the date of the closing of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision shall be in writing and shall set

forth the arbitrator's opinion and conclusions on the issues submitted.

The arbitrator shall limit his decision strictly to the application and interpretation of the provisions of this agreement and he shall be without power or authority to make any decision:

1. Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this agreement or of applicable law or rules or regulations having the force and effect of law;
2. Involving Board discretion or Board policy under the provisions of this agreement, under Board by-laws, or under applicable law, except that he may decide in a particular case that Board policy was disregarded or that its attempted application under any term of this agreement was so discriminatory, arbitrary, or capricious as to constitute an abuse of discretion.
3. Limiting or interfering in any way with the powers, duties, and responsibilities of the Board under its by-laws, applicable law and rules and regulations having the force and effect of the law.

The decision of the arbitrator shall be in writing and, if made in accordance with his jurisdiction and authority under this agreement, shall be advisory only and not binding upon the Board.

The Board shall make a final determination within 30 days after receipt of the arbitrator's decision.

The arbitrator's fee will be shared equally by the parties to the dispute.

D. GENERAL PROVISIONS AS TO GRIEVANCES AND ARBITRATION

1. The filing or pendency of any grievance under the provisions of this Article shall in no way operate to impede, delay or interfere with the right of the Board to take the action complained of, subject, however, to the final decision on the grievance.
2. Nothing contained in this article or elsewhere in this agreement shall be construed to deny to any employee his rights under Section 15 of the New York Civil Rights Law or under the State Education Law or under applicable Civil Service Laws and Regulations.
3. All grievance conferences shall be held at convenient times and locations in order to afford a fair and reasonable opportunity for all those entitled to be present to attend. When such conferences are scheduled during Board working hours all persons participating shall be excused from their regular duties without loss of pay.

E. TIME LIMITS

1. Failure at any level of this procedure to communicate the decision on a grievance within the specified time limits shall permit the aggrieved supervisor to proceed to the next level. Failure at any level of this procedure to appeal a grievance

to the next level within the specified time limits shall be deemed acceptance of the decision rendered at that level.

2. The time limits specified in this procedure may be extended in any specific instance by mutual agreement.

F. PRIORITY HANDLING OF GRIEVANCES

The Board and the CSA will consult periodically on the priority of handling grievances pending at the level of the Chancellor with a view to expediting the processing of grievances which require prompt disposition.

ARTICLE XI

SPECIAL COMPLAINTS

It is the declared objective of the parties to encourage the prompt and informal resolution of special complaints not covered by the Grievance Procedure and to dispose of such complaints as they arise and to provide recourse to orderly procedures for their adjustment.

A. DEFINITION

A "special complaint" is a complaint by a supervisor that a person or persons or groups are engaging in a course of harassing conduct, or in acts of intimidation, which are being directed against him in the course of his employment, and that the principal of the school in which he is assigned or the District Superintendent of the district in which he is employed or the appropriate Assistant Superintendent at the high school level has not afforded the supervisor adequate relief against such course of conduct or acts of intimidation.

B. FILING AND PRIORITY HANDLING

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A special complaint shall be promptly filed with the Chancellor by the affected employee or, upon his request, by CSA. Such complaint shall receive expedited handling pursuant to this Article.

C. JOINT INVESTIGATION AND INFORMAL RESOLUTION

Within twenty-four (24) hours after the special complaint is filed with the Chancellor, a "Joint" Investigating Committee consisting of one representative designated by the Chancellor and one representative designated by CSA shall investigate the complaint at the school or district level to ascertain the facts and bring about a prompt resolution of the problem without resort to formal procedures. In the course of its investigation, the Joint Committee shall confer with the principal of the school, the Chancellor and other persons involved in the controversy.

D. ADMINISTRATIVE HEARING AND CONTINUED ATTEMPT AT INFORMAL RESOLUTION

If the complaint is not resolved by the Joint Investigating Committee to the satisfaction of the affected supervisor he may request a hearing before the Chancellor. Within forty-eight (48) hours after receipt of the request for hearing, the Chancellor, or a representative designated by him, shall hold a hearing at which the Joint Investigating Committee shall report its findings and all persons involved, including the affected supervisor, shall have an opportunity to be heard. The complaining supervisor may represent himself at the hearing or, upon request, may be represented by CSA or by a person of his own choosing other than an attorney.

At the hearing the Chancellor, or his representative shall make every effort to resolve the complaint informally and all persons involved shall cooperate toward this end.

E. DECISION OF THE CHANCELLOR

Within seventy-two (72) hours following the close of the hearing, the Chancellor shall notify all parties of his decision and the manner in which it shall be effectuated.

F. FACT FINDING AND RECOMMENDATIONS

If the complaint is not resolved by the Chancellor, the affected supervisor, or CSA upon his request, may submit it for hearing and fact finding before an arbitrator selected in accordance with Article X C of this Agreement. The submission shall be made within ten (10) school days after the issuance of the Chancellor's decision.

The voluntary labor rules of the American Arbitration Association shall apply to the proceeding in so far as they relate to the hearing, fees and expenses.

The fact-finder shall render findings not later than seventy-two (72) hours from the date of the close of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the fact-finder. The findings of fact shall be in writing. The fact-finder shall limit his findings strictly to the question whether the employee's complaint has been substantiated by the evidence. If the fact-finder finds the complaint to be substantiated and unremedied, he shall recommend an appropriate remedy.

The fact-finder shall not interpret or apply the provisions of this Agreement or exercise any of the other functions specified in Article X of this agreement, nor shall he exercise any of the powers conferred upon trial examiners pursuant to Section 2590-j 7 (f) of the Education Law.

G. BOARD CONSIDERATION

Within ten (10) days after receipt of the fact finder's report, the Board shall make a determination.

ARTICLE XII

TRIAL EXAMINER PANEL

Before designating the panel of trial examiners to be maintained by the Chancellor pursuant to Section 2590-J7 (f) of the Education Law, the Chancellor will afford CSA an opportunity to challenge any proposed designee and the persons challenged shall not be designated. Members of the panel will serve in rotation unless the community board selects a particular person on the panel.

ARTICLE XIII

CONSULTATION

A. DISTRICTS AND BUREAUS

A CSA consultation committee shall be established in each district and bureau. The community or district superintendent or bureau director shall meet once a month with such committee for the purpose of consulting with respect to matters of mutual concern in the areas of

educational and supervisory responsibility and to questions relating to the implementation of this agreement.

B. CHANCELLOR

A CSA committee will meet monthly with the Chancellor or his deputy for consultation on matters of mutual concern and on questions relating to the implementation of this agreement. CSA will be consulted in advance by the Chancellor or his deputy on any proposed changes in policy or administration which may involve supervisory working conditions.

ARTICLE XIV

EXCLUSIVE CHECK-OFF

The Board will honor, in accordance with their terms, only such written authorizations as are properly executed by employees in the unit covered by this agreement for the deduction of their dues in behalf of the CSA.

The Board will honor individual written authorizations for the deduction of CSA dues in accordance with their terms, including authorizations stating that they are irrevocable until the following June 30 and automatically renewable for another year unless written notice is given to the Board between June 15 and June 30.

ARTICLE XVCONFORMITY TO LAW

A. If any provision of this agreement is or shall at any time be contrary to law, then such provisions shall not be applicable or performed or enforced, except to the extent permitted by law and any substitute action shall be subject to appropriate consultation and negotiation with the CSA.

B. In the event that any provision of this agreement is or shall at any time be contrary to law, all other provisions of this agreement shall continue in effect.

ARTICLE XVINO-STRIKE PLEDGE

The CSA and the Board recognize that strikes and other forms of work stoppages by supervisors are contrary to law and public policy. The CSA and the Board subscribe to the principle that differences shall be resolved by peaceful and appropriate means without interruption of the school program. The CSA therefore agrees that there shall be no strikes, work stoppages, or other concerted refusal to perform work, by the supervisors covered by this agreement, nor any instigation thereof.

The following Article is required by the Public Employees' Fair Employment Act, as amended by Section 204 a, approved March 10, 1969:

ARTICLE XVII

NOTICE - LEGISLATIVE ACTION

It is agreed by and between the parties that any provision of this agreement requiring legislative action to permit its implementation by amendment of law or by providing the additional funds therefor, shall not become effective until the appropriate legislative body has given approval.

ARTICLE XVIII

MATTERS NOT COVERED

With respect to matters not covered by this agreement which are proper subjects for collective bargaining, the Board agrees that it will make no changes without appropriate prior consultation with CSA.

The Board will continue its present policy with respect to sick leave, sabbatical leaves, vacations and holidays except insofar as change is commanded by law.

ARTICLE XIX

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DEFINITIONS

As used in this agreement, the following terms shall mean:

1. Chancellor. The term "Chancellor" shall mean the Chancellor of the City district.
2. Community Superintendent. The term "Community Superintendent" shall mean a Community Superintendent of a Community Board.
3. Board - The term "Board" shall mean the City Board, it being understood, nevertheless, that this agreement is binding on all community boards in accordance with Section 2590 of the Education Law.
4. Intermediate Supervisor. The term "Intermediate Supervisor" shall mean (a) In school organizations - an assistant principal, an assistant principal (administration) and an assistant principal (supervision) and (b) In bureau organizations - an assistant director and all other lower ranking supervisors.
5. Community Board. The term "Community Board" shall mean the board of education of a community district.

ARTICLE XXDURATION

This agreement and each of its provisions shall be effective as of October 1, 1972, and shall continue in full force and effect until October 1, 1975.

Negotiations for a subsequent agreement will commence no sooner than October 19, 1974, for budgetary items and no sooner than March 15, 1975, for all other items, upon request of either party filed two weeks before each of these dates.

Dated: Brooklyn, New York

1973

SEYMOUR P. LACHMAN
President Board of Education

EMANUEL MUNICE
President
Council of Supervisors and Administrators

MEMORANDUM OF UNDERSTANDING

Between

The Board of Education
of the
City School District of the
City of New York
and
Council of Supervisors and Administrators of the City of New York
Local 1, School Administrators and Supervisors
Organizing Committee, AFL-CIO

The Board of Education (herein called the "Board") and the Council of Supervisors and Administrators (herein called "CSA"), in the course of collective bargaining negotiations, have agreed that the following items are to be incorporated in this memorandum of understanding:

I. JOINT STUDY COMMITTEE

A joint study committee will be established composed of representatives of the Board and CSA to review the existing ratios of assistant principals and chairmen in the staffing of schools and the existing ratios of supervisors to staff in district or central bureaus. Such committee may submit its recommendations for consideration by the Chancellor prior to the submission of the tentative expense budget proposals to the Board.

II. EQUIPMENT REPAIR

The Board will make every effort to assure the expeditious maintenance and repair of educational equipment and office machines which are customarily utilized by supervisory personnel.

III. TELEPHONE SERVICE

The Board will make every effort to provide each supervisor with a telephone in his or her office.

IV. ALLOCATION OF FUNDS

Subject to the policies established by the Community Superintendent and the Community School Board or the appropriate Assistant Superintendent for High Schools and the Central Board, expense budget funds allotted to a school may be allocated by the principal in such manner as to further the educational goals of the school.

V. AGENCY SHOP

Although the Board seriously questions the desirability of the agency shop for public employees, the Board will grant the agency shop if such arrangement is authorized by legislation or if under City policy the City grants it to any union representing any City employees of comparable rank.

Executive Director, Office of
Labor Relations and
Collective Bargaining

Dated: October 1, 1972
 Brooklyn, New York

President, Council of Supervisors
and Administrators



Letter from Joseph Bruno to Judge Knapp Dated May 28, 1975

LAW DEPARTMENT

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MUNICIPAL BUILDING

NEW YORK, N Y 10007

W. Bernard Richland
~~XXXXXXXXXXXX~~ Corporation Counsel

May 28, 1975

Honorable Whitman Knapp
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: GONZALES v SHANKER et al.
75 Civ. 1705

Dear Judge Knapp:

This is to inform the Court that named defendant Leonard Lurie advised me this date that he was served with process in the above stated matter on or about May 21, 1975.

Thus, defendant Lurie's defense of lack of service of process upon him expressed in a motion to dismiss initiated by the city defendants and filed in this Court on May 22, 1975 is hereby withdrawn.

Defendant Lurie hereby joins in all other common defenses asserted by city defendants in support of their motion to dismiss.

I trust that this will not inconvenience the Court.

Very truly yours,

Joseph F. Bruno
Assistant Corporation Counsel
566 - 6377/2192

cc: Layton & Sherman, Esqs.
50 Rockefeller Plaza
New York, New York 10020

James R. Sandner, Esq.
260 Park Avenue South
New York, New York 10010



Letter from Joseph Bruno to Judge Knapp Dated June 2, 1975


LAW DEPARTMENT

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MUNICIPAL BUILDING

NEW YORK, N. Y. 10007

W. Bernard Richland

 E. Corporation Counsel

June 2, 1975

Hon. Whitman Knapp
United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: Gonzalez v. Shanker et al.

Dear Judge Knapp:

On May 29, 1975 the United States Court of Appeals for the Second Circuit rendered a decision in the case of Fuentes v. Roher, 75 Civ. 7213, 7224, cited as authority in the city defendants' memorandum of law in support of a motion to dismiss.

This Circuit affirmed Judge Stewart's dismissal of Fuentes' federal claims and held in pertinent part that despite Fuentes' present suspension from duties, a "final decision has not 'been formalized, [nor have] its effects [been] felt in a concrete way' by Fuentes. . . (citations omitted)" [see: pp 22-23, slip opinion, attached hereto]. Thus, this Circuit found Fuentes' claims to be premature under the doctrine of Abbott Laboratories v. Gardner, 387 U.S. 136 (1967) and affirmed the lower court's dismissal on the grounds of lack of ripeness for judicial resolution.

In light of plaintiff Gonzales' supervisory position in Community School District No. 1 and the implication present in the complaint of an unfettered right in each employee of a community school board to engage in outspoken partisan support of a particular slate of candidates for election to his employer-board, it is interesting to note the language of this Circuit in Fuentes v. Roher, supra, at fn. 6, pp. III-IV, slip opinion (attached hereto) where it analogizes the situation in Fuentes to those under the Hatch Act, 5 U.S.C. §7324(a) (2) (1970), where employees of a public body or agency may properly be prevented from "using any official

June 2, 1975

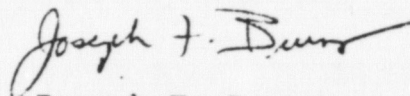
125

powers or prestige to influence voters improperly." The Circuit held that even in Fuentes' case where one of the charges which lead to his suspension was "engaging in partisan campaigning for a board election", it would not permit him to come directly to federal court until he was harmed in a more concrete way, i.e., dismissal.

In the case at bar, plaintiff Gonzalez has not been dismissed, suspended or even charged with anything at all. Claims of retaliation for partisan support of a particular candidate or slate when no concrete harm can be shown, as in Fuentes v. Roher, will not be enough to permit direct access to the federal courts at a premature stage.

Your consideration of the attached decision will be greatly appreciated.

Very truly yours,



Joseph F. Bruno
Assistant Corporation Counsel
City of New York
Attorney for City Defendants

cc: Layton and Sherman, Esqs.
50 Rockefeller Plaza
New York, New York 10020
Attorney for Plaintiff

James R. Sandner, Esq.
260 Park Avenue South
New York, New York 10010
Attorney for U.F.T. defendants

Affidavit of Raul Gonzalez in Opposition to Motion to Dismiss
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

126

- - - - - X
RAUL GONZALEZ, :
Plaintiff, : 75 Civ. 1705 (WK)
- against - :
ALBERT SHANKER, et al., : AFFIDAVIT IN OPPOSITION
Defendants. : TO MOTION TO DISMISS
- - - - - X

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

RAUL GONZALEZ, being duly sworn, deposes and says:

1. I am a resident of the City of New York, the principal of Junior High School 60M in Manhattan and the plaintiff in this action.

2. I have been a member of the Council of Supervisors and Administrators of the City of New York ("CSA"), the exclusive collective bargaining representative for supervisory and administrative employees of the Board of Education, for approximately one and one-half years.

3. In the most recent Community School District Elections in School District One, the CSA vigorously supported the candidate slate put forward by the United Federation of Teachers and spent at least \$10,000 in this effort. (See attached copies of newspaper articles.)

4. In addition, my experience in this school district has made clear to me that the CSA has vigorously enforced against Puerto Rican supervisory and administrative personnel the

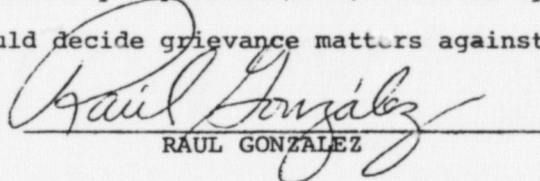
directives of the Chancellor of the Board of Education regarding School Board Election campaign activity. At the same time, the CSA has abused those directives and campaigned vigorously within the schools, and tolerated and encouraged campaign activity by UFT favored personnel.

5. The CSA has never supported any action taken by me in the course of the performance of my duties.

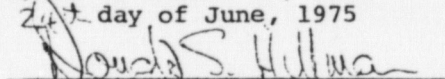
6. The CSA has acted affirmatively and against my interest on numerous occasions, most recently in June of 1975, by placing my name lower than that of a UFT favored principal on a Junior High School division seniority list, when in fact I was senior to that principal.

7. It is my experience, and I am informed by other Puerto Rican supervisory and administrative personnel, that the CSA response to requests for assistance is met with claims that the matter is "not within our province" or "not covered by the contract" or "poses a conflict of interest" and assistance is withheld although it is extended to UFT favored personnel.

8. Following the May 6, 1975 Community School Board Elections which returned a UFT majority school board, Mr. Kenneth Carosella, a defendant in this action, and the UFT Chapter Chairman of J.H.S. 60M, boasted to me that all grievances involving me would be decided against me at the second step or superintendent's level. In other words, he meant that apart from the merits of the matter, the Community Superintendent, selected by the UFT dominated board, would decide grievance matters against me.


RAUL GONZALEZ

Sworn to before me, this
24th day of June, 1975



DONALD S. HILLMAN
Notary Public, State of New York
No. 31-4526758
Qualified in New York County
Commission Expires March 30, 1978

2d Union Puts \$ in School Races

By BERT SHANAS

The executive board of the city's school principals' union has quietly approved a decision to pour large amounts of money and manpower into the May 6 school board elections to elect candidates who favor union positions, it was learned yesterday.

While the union, the Council of Supervisors and Administrators, was virtually inactive in the first school elections of 1970 and only involved to a minor degree in the 1973 contests, the decision has been made to launch an all-out effort for next month's election.

In 1973 the union put a limit of \$9,500 on what it could spend in all 32 school district elections. This year, the council has allocated \$10,000 for the race in just one district, District 1 on the lower East Side, where the controversy surrounding Superintendent Luis Fuentes is expected to result in a heated and bitter race.

On a citywide basis, including the District 1 race, the union has

already committed \$20,000 and "is prepared to go much higher where necessary," according to union President Peter S. O'Brien.

"Let's face it," said O'Brien. "If the city's school elections were nonpolitical like they should be, we'd stay out. But they are political, and we've already seen that some school boards are making decisions that deliberately violate our contract. Well, we've got our interests to protect too."

The large-scale participation of the union, which represents 3,300 principals, assistant principals and other school supervisors, makes it the second major school union involved in the race, and raises the probability

that huge amounts of money will be spent, in the District 1 contest especially.

The other union, the United Federation of Teachers, which speaks for 80,000 school employees, has already been involved in the school elections for some time, throwing about \$4,000 into its effort in 1973.

A spokesman for UFT said President Albert Shanker said yesterday that he expected the figure to reach \$100,000 this year, with at least \$5,000 singled out for the District 1 campaign where two slates of candidates — one pro-Fuentes and the other anti-Fuentes — are battling it out.

U.F.T., Fuentes Backers Campaign Hard

By CHARLES KAISER

In one of the most sharply contested school board elections in the city, the United Federation of Teachers and supporters of Luis Fuentes, the suspended Superintendent of School District 1, poured money and manpower into their campaigns.

Yesterday, while the election was in progress, a representative of the U.F.T. charged that three men, one of them holding a gun, had menaced a volunteer handing out cards near a polling place. The police said they could not confirm the charge.

Mr. Fuentes, in the storefront headquarters of the "Por Los Ninos" slate, which supports him, predicted victory but added: "We may have to challenge this one because of numerous and flagrant violations of the law."

After hearing complaints that there was "heavy electioneering" and that inspectors were filling out ballots for voters in District 1, Bea Dolan, executive director of the Board of Elections, toured the district yesterday morning and declared the reports unfounded.

Mrs. Dolan acknowledged that some of the district's 29 polling places had opened late because of insistence by the Police Department that both a Democrat and a Republican be present before the voting began, but that problem was resolved by 7:30 A.M. after Supreme Court Justice Edward R. Dudley issued an order overruling the police.

The incumbent board was elected last year with five supporters of the teachers union and four backing Mr. Fuentes, who was suspended from his job last August but who continues to draw his salary.

One of the U.F.T.-backed members has sometimes sided with the Fuentes faction, and one of the Fuentes supporters recently left the city, according to Max Green, a U.F.T. official running this year's campaign for the union's Brotherhood slate.

Mr. Green said yesterday he had 300 volunteers working for him, plus 40 high-school students whom the union paid \$37.50 each for their services.

Principals' Role

While a union spokesman declined to estimate its total investment in the District 1 campaign, Peter S. O'Brien, president of the Council of Su-

pervisors and Administrators, the principals' union, said his organization was spending \$10,000 in support of the Brotherhood slate. "I'm convinced we're going to win very heavily," he said.

Mr. Fuentes said that the 10-member slate backing him was spending no more than \$5,000, but that did not include the contributions of District 37 of the State, County and Municipal Employees Union, which yesterday put 40 staff members and 150 volunteers into the campaign in Mr. Fuentes' behalf.

Mrs. Dolan predicted heavier than average voting in the District 1 election. Mr. Fuentes said, "I would like to leave with a great victory." His contract with the district expires July 30.

Affidavit of Phyllis Robinson in Opposition to Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

129

----- X

RAUL GONZALEZ, :

Plaintiff, :

75 Civ. 1705 (WK

- against - :

ALBERT SHANKER, et al., :

Defendants. :

AFFIDAVIT IN OPPOSITION
TO MOTION TO DISMISS

----- X

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

PHYLLIS ROBINSON, being duly sworn, deposes and says:

1. I am a resident of New York and am employed by the Board of Education of the City of New York as the Reading Coordinator of Junior High School 60M.

2. I have been employed in the public schools of the City of New York for twenty-four years and am a member of the United Federation of Teachers.

3. On Thursday, June 12, 1975 when I entered the main office of Junior High School 60M, I saw Mr. Kenneth Carosella, mathematics teacher and UFT Chapter Chairman, together with Mrs. Lorraine Spivack, Personnel Secretary, looking through numerous teachers' personnel files.

4. I know from my experience that no teacher or staff member is permitted under any circumstances to examine the files of another teacher and may only refer to his or file upon appropriate request as provided by the UFT contract. Secretarial

staff have access to files only for ministerial purposes like filing, etc. They are not otherwise permitted to examine or peruse the files of other personnel.

Phyllis Robinson

PHYLLIS ROBINSON

Sworn to before me, this

24th day of June, 1975
Donald S. Hillman
DONALD S. HILLMAN
Notary Public, State of New York
No. 31-4526758
Qualified in New York County
Commission Expires March 30, 1976

Notary Public

Reply Affidavit of Kenneth Carosella

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

131

RAUL GONZALEZ,

Plaintiff,

-against-

75 CIV. 1705
(WK)

ALBERT SHANKER, et al.,

REPLY AFFIDAVIT

Defendants.

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

KENNETH CAROSELLA, being duly sworn, deposes and says:

1. I am a teacher of Mathematics at J.H.S. 60 M, serve as the United Federation of Teachers Chapter Chairman of that school, and am a defendant in this action.

2. As the union representative in J.H.S. 60 M, my duties and responsibilities include inter alia: representing all teachers, secretaries, lab assistants, guidance counselors, and educational assistants at grievance procedures; advising teachers and other non-supervisory members of the staff as to their rights under the collective bargaining agreement; overseeing the enforcement of all provisions of the collective bargaining agreement; conferring with the principal and other supervisory personnel regarding contractual issues, administrative policies, and general school policy.

3. The statement that Mr. Gonzalez attributes to me in paragraph 8 of his affidavit in opposition to defendant's motion to dismiss, is totally untrue. Moreover, it should be noted by the Court that any grievance that Mr. Gonzalez, as Principal, should choose to pursue would be taken pursuant to the collective bargaining agreement between the Board of Education of the City School District of the City of New York and the Council of Supervisors and Administrators

(C.S.A.). The United Federation of Teachers, is the exclusive collective bargaining representative for teachers not supervisors, and as such has no control over the operations of the C.S.A. and its collective bargaining agreement with the Board of Education.

4. Plaintiff's conclusion that the Community Superintendent would decide grievance matters against him because such official would be selected by "the U.F.T. dominated board" is untrue, misleading and without foundation. Upon information and belief, no member of the present community school board in District One is either a teacher or a member of the U.F.T. Each member of the nine member school board is a resident of the school district, having been elected by the citizens and parents of that school district pursuant to Section 2590c of the New York State Education Law.

Furthermore, it should be noted that from April 9, 1975, to date, the Community Superintendent of District One has been an appointee of Chancellor Irving Anker. Due to certain legal disputes, which need not be gone into for purposes of this motion, Chancellor Anker appointed Mr. Rufus Shorter to serve as Community Superintendent on April 9, 1975. Mr. Shorter's regular position is that of Assistant Superintendent of the City School District of the City of New York. Mr. Shorter is one of the highest ranking Black officials in the New York City Board of Education. On or about May 27, 1975, Chancellor Anker substituted Mr. Jerome Kovalcik, for Mr. Shorter. Mr. Kovalcik is also an Assistant Superintendent of the City School District of the City of New York. As of this date Mr. Kovalcik is still serving as Community Superintendent. Neither Mr. Shorter nor Mr. Kovalcik have any connection or affiliation with the U.F.T. In fact, as Board of Education officials they must often take positions adverse to the interests of the Union.

Had Mr. Gonzalez pursued his administrative remedies under the C.S.A. Collective Bargaining Agreement, one of these two men would have reviewed his grievances during the course of the grievance machinery (See Articles VI, and X, of the Agreement, Exhibit A, Affidavit of STEPHEN A. PERELSON, sworn to May 20, 1975) Finally, Mr. Gonzalez has offered no proof to substantiate his allegations.

5. Ms. Robinson's allegation that I, together with Mrs. Lorraine Spivak, was "looking through numerous teachers' personnel files" (Affidavit of Phyllis Robinson, June 24, 1975, paragraph 3.), is both presumptuous and untrue.

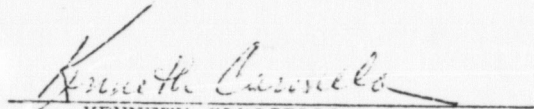
On Thursday, June 12, 1975, I was looking at a stack of papers retained by Mrs Spivak. However, contrary to Ms. Robinson's assertions, this was not a teacher personnel file, but rather a file containing Board of Education circulars, teachers programs, matters pertaining to teacher seniority lists, which are, in passing, matters of public record. My purpose in this endeavor was to ascertain the proper order of seniority of teachers at J.H.S. 60 M.

6. The Court may take judicial notice of the fact that the City of New York is in the midst of a monumental budgetary crisis. As a result, many thousands of teachers face the almost certain fate of being layed off (excessed) in the upcoming school year. As the U.F.T. Chapter Chairman in my school, it was my responsibility to see that such excessing occur according to the State Education Law and the Collective Bargaining Agreement. It was for this purpose that I was reviewing certain circulars and documents in the school office on June 12, 1975. In this regard, the Court is respectfully referred to Article IV F 17 subd. (e) of the collective bargaining agreement between the Board of Education of the City of New York and the United Federation of Teachers which declares:

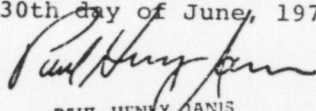
"The Chapter Chairman shall have access to such school information as may be necessary to the performance of

his duties, including teacher programs,
room assignments, and allocation of
non-teaching time."

[A copy of this contract provision is annexed as Exhibit A].


KENNETH CAROSELLA

Sworn to before me this
30th day of June, 1975.


PAUL HENRY JANIS
NOTARY PUBLIC, State of New York
No. 41-7073550
Qualified in Queens County
Commission Expires March 30, 1978

reason of its previous experience with him on such a committee. The Chancellor shall not designate anyone to whom such objection is made.

d. Teachers on probation who have completed at least three years of service on regular appointment in the school shall be entitled, with respect to the discontinuance of their probationary service, to the same review procedures as are established for tenured teachers under Section 2590 j 7 of the Education Law.

e. A teacher summoned by the principal to a conference which may lead to disciplinary action for reasons of misconduct may be accompanied, at his option, by the chapter chairman or his designated alternate.

f. Any teacher who is suspended pending hearing and determination of charges shall receive full compensation pending such determination and imposition of any penalty.

16. Additional School Facilities

a. Adequate supplies will be made available in teacher washrooms.

b. Pay telephone facilities will be made available to teachers for their reasonable use.

c. In schools where continuous cafeteria service for teachers is not available, a vending machine for beverages shall be installed at the request of the particular school staff.

17. Information at the School

a. All official circulars shall be posted on school bulletin boards for the inspection of teachers and shall be made available to teachers on request.

b. Specific information as to the rotation of assignments, or as to seniority in the school will be made available by the principal upon the request of a teacher.

c. A copy of current teaching and non-teaching assignments will be posted in each school and will also be given to the chapter chairman.

d. Copies of annual financial statements and audits of school monies shall be posted on school bulletin boards and made available to chapter chairmen.

(e) The chapter chairman shall have access to such school information as may be necessary to the performance of his duties, including teacher programs, room assignments, and allocation of non-teaching time.

18. Work Year

Beginning in September 1973, all teachers shall report to their schools to begin work on the Wednesday following Labor Day and they shall be in attendance on duty thereafter on all days of the school year except the last two weekdays of the month of June. In no event, however, shall the number of days worked in any school year under this work calendar be fewer than the number of days teachers would have worked had they reported, as before, on the Friday after Labor Day and worked through the last weekday in June.

To initiate this work calendar, the 1972-73 work year will end on June 27, 1973.

19. School Day

The school day for teachers serving in schools shall be six hours and 20 minutes and such additional time as the by-laws provide.

20. Teacher Files

Official teacher files in a school shall be maintained under the following circumstances:

1. No material derogatory to a teacher's conduct, service, character or personality shall be placed in the files unless the teacher has had an opportunity to read the material. The teacher shall acknowledge that he has read such material by affixing his signature on the actual copy to be filed, with the understanding that such signature merely signifies that he has read the material to be filed and does not necessarily indicate agreement with its content. However, an incident which has not been reduced to writing within three months of its occurrence, exclusive of the summer vacation period, may not later be added to the file.

2. The teacher shall have the right to answer any material filed and his answer shall be attached to the file copy.

Reply Affidavit of Lorraine Spivack

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

136

RAUL GONZALEZ,

Plaintiff,

-against-

ALBERT SHANKER, et al.,

Defendants.

75 CIV. 1705
(WK)

REPLY AFFIDAVIT

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

LORRAINE SPIVACK, being duly sworn deposes and says:

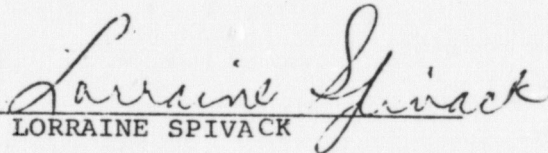
1. I am Personnel Secretary, Junior High School 60 M, and a defendant in this action. I was appointed as a regular school secretary in September 1947. I have served in my capacity as school secretary in JHS 60 M for the last seventeen years.

2. Part of responsibilities as Personnel Secretary require me to maintain teacher personnel files, school aide files, lunchroom files; teacher absences and lateness records; teacher performance observations; payroll matters; and a myriad of other administrative functions. In addition, I perform the same functions in regard to supervisory personnel, including Mr. Gonzalez.

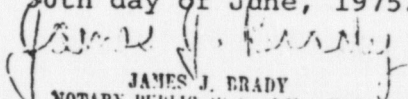
3. On Thursday, June 12, 1975, Mr. Carosella and I were going through a cabinet apart from teacher personnel files. This cabinet includes Board of Education and Community School Board circulars, teachers' programs, and matters relating to teacher seniority. Most, if not all of the documents and memoranda kept in this cabinet are public records, and have at one time or another, been posted on the school bulletin board. Mr. Carosella was attempting to determine the proper

order of teacher seniority in anticipation of the forthcoming budgetary cuts in school personnel. We were not looking through teacher personnel files. Indeed, I find it quite distasteful to have to explain actions which are taken as part of my professional responsibilities as the Personnel Secretary of JHS 60 M and an employee of Community School District One. This becomes even more repugnant when one considers the fact that I am being compelled to explain my actions within the context of a federal civil rights action in which Mr. Gonzalez is seeking compensatory and exemplary damages.

4. Ms. Robinson's allegations in paragraph "4" of her affidavit (Affidavit of Phyllis Robinson, June 24, 1975), strike me as being rather ironic since she herself retains a set of keys to both Mr. Gonzalez's office and his files, and as a matter of routine is permitted to open the school office files daily. On numerous occasions I have observed Ms. Robinson going through both teacher personnel files and Mr. Gonzalez's own personnel file. Moreover, Ms. Robinson, contrary to her assertion, is not the Reading Coordinator. Ms. Robinson is a teacher of common branches, who has, under Mr. Gonzalez's tutelage, become his de facto assistant principal. Therefore, any statements that she may make in an affidavit should be weighed with these facts in mind.


LORRAINE SPIVACK

Sworn to before me this
30th day of June, 1975.


JAMES J. BRADY
NOTARY PUBLIC, State of New York
No. 44-4526982
Qualified in Rockland County
Commission Expires March 30, 1976

Memorandum and Order of Knapp, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
PAUL GONZALEZ,

Plaintiff,

- against -

ALBERT SHANKER, ANNE MERSEREAU,
LEONARD LURIE, ADOLPH ROHR,
RICHARD LEE PRICE, JEROME GOODMAN,
CAROLYN KOZLOWSKY, MARTIN RUBIN,
KENNETH CAROSELLA, GARY SOUSA,
HARRY LASSER, ROGER BRAVERMAN
LORRAINE SPIVACK, IRVING ANKER,
JOSEPH MONSERRAT, STEPHEN AIELLO,
JOSEPH G. BARKAN, ROBERT CHRISTEN,
AMELIA ASHE, JAMES F. REGAN,
ISAIAH ROBINSON, THE UNITED FEDERATION
OF TEACHERS, SOL LEVINE, GEORGE PESKO
and MAX GREEN,

Defendants.

42921
MEMORANDUM AND ORDER

75 Civ. 1705

-----x
A P P E A R A N C E S :

LAYTON AND SHERMAN
Attorneys for Plaintiff
50 Rockefeller Plaza
New York, New York 10020
By: DONALD S. HILLMAN
FREDRICK E. SHERMAN,
Of Counsel

JAMES P. SANDNER
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260 Park Avenue South
New York, New York 10010
By: JEFFREY S. KARP,
Of Counsel

W. BERNARD RICHLAND
Corporation Counsel
Attorney for City Defendants
Municipal Building
New York, New York 10007
By: JOSEPH F. BRUNO
Assistant Corporation Counsel,
Of Counsel

139

* * * *

KNAPP, D.J.

This action arises in the aftermath of the long and bitter struggle for control of Community School District No. 1 on the lower east side of Manhattan.

The plaintiff, Raul Gonzalez, a Puerto Rican, is principal of Junior High School 60M, one of the schools in the embattled area. He brings this action for declaratory relief, injunctive relief, and damages against certain governmental defendants, including the Community Superintendent of School District No. 1, certain members of the Community School Board for that district, the Chancellor and the individual members of the Central Board of Education of the City of New York, and against certain non-official defendants, primarily the United Federation of Teachers and certain of its officers and employees ("the UFT defendants"). The first cause of action in plaintiff's complaint alleges violations of his civil rights under the First and Fourteenth Amendments to the Constitution and under 42 U.S.C. §§1981 and 1983. In the second cause

of action, plaintiff further claims that all the named defendants, with the exception of the Chancellor and the individual members of the Board of Education, conspired in violation of 42 U.S.C. §1985(3) to deprive plaintiff of the equal protection of the laws and from exercising his rights as a citizen. Finally, plaintiff claims that all the defendants, having knowledge of the conspiracy, and having the power to prevent or aid in preventing it, failed or neglected to do so, thereby violating 42 U.S.C. §1986. Jurisdiction is predicated on 28 U.S.C. §1343 and §2201.

All the defendants have moved pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint, primarily on the grounds (1) that plaintiff has not exhausted his available administrative and/or contractual remedies, and (2) that as to most of the defendants, the plaintiff has failed to plead facts of the requisite specificity necessary to establish a claim upon which relief can be granted under 42 U.S.C. §§1981, 1983, 1985(3), and 1986. We reject both of these contentions.

I. Background

The facts of this case are intimately interrelated with the history of the dispute that has embroiled Community School District No. 1 over the past few years. As the plaintiff notes in his complaint, the struggle for control over the governance of the school district has been particularly heated and vitriolic. Elections for

school board membership in the district have been conducted in an atmosphere of intense animosity and racial hostility.

The prime protagonists in the dispute have been Luis Fuentes and the United Federation of Teachers. Fuentes, a Puerto Rican, committed to a program of bilingual education, was appointed superintendent of the school district in October, 1972. The majority of the school board at that time consisted primarily of minority group members identified with a community organization known as the Coalition for Education. At the next school board election, held in May, 1973, candidates from the Coalition were opposed by a group called the Committee for Effective Education, a UFT-supported organization which sponsored eight white candidates and one black. This bitterly fought election resulted in the choice of six CEE candidates and three Coalition members. On October 16, 1973, the CEE members prevailed on a vote to suspend Fuentes as superintendent.

Prior to the vote, however, the Coalition had instituted suit in this court claiming that various acts by employees of the Board of Elections had resulted in a discriminatory impact on the rights of minority voters. On October 19, 1973, the Coalition obtained an injunction against Fuentes' suspension. Eventually, the group succeeded in having the entire May, 1973 election set aside as held in a racially discriminatory manner. See, Coalition for Education in District One v. Board of Elections of the City of New York (S.D.N.Y.

1974) 370 F.Supp. 42, affd. (2d Cir. 1974) 495 F.2d 1090. A new election was held on May 14, 1974. This time five CEE candidates and four Coalition members were chosen. On August 8, 1974, by a vote of 5-0 (with the four Coalition members abstaining), Fuentes was again suspended.

It is out of the foregoing events that plaintiff claims the conspiracy to deprive him of his civil rights, and the actual deprivations of those rights, developed. The core of his allegations can be found in paragraphs 29 to 31 of his complaint. There, plaintiff states that prior to the pivotal May, 1973 school board election, he was approached by certain representatives of the UFT, and, in essence, asked to cooperate with the UFT in their campaign against Fuentes and the Coalition. When plaintiff refused, and instead reaffirmed his intention to support Fuentes, plaintiff claims defendant Levine threatened that if a UFT dominated school board were to be elected, they would make it difficult for plaintiff to continue to function as a principal in the district. Thus, plaintiff alleges (Complaint, para. 29):

"Defendant Levine made it clear that many obstacles would arise to prevent plaintiff from functioning effectively in his position."

The plaintiff now contends that this threat, motivated by both racial animus and a desire to punish him for the exercise of his First Amendment rights, has indeed been carried out. He maintains that he has

been "subjected to a deliberate and continuing program of harassment, interference and non-cooperation in the performance of his duties as Principal of J.H.S. 60M" (Complaint, para. 30). In paragraph 31 of the complaint, the plaintiff sets forth fourteen fairly detailed illustrations of this policy of harassment and non-cooperation.

Among the allegations are:

- "(a) The Community School Board has failed to act upon the disciplinary recommendations of plaintiff in a manner consistent with the treatment of disciplinary recommendations of non-Puerto Rican principals favored by the U.F.T. . . .
- "(b) The School Board has withdrawn financial support for an existing and effective after-school hours Youth Services Agency Center at J.H.S. 60M, forcing the closing of this Center, although the Board has continued to support similar Centers located in neighboring schools within the District whose principals are favored by the U.F.T. . . .
- "(c) Defendant Chancellor Anker and defendant members of the Board of Education, through and by the Office of Buildings, Board of Education, have withheld a desperately needed painting of the entire school. . . ."

As is apparent from the above examples, the illustrations vary in the degree of interference and discrimination alleged. While any one of the allegations may appear to present a trivial or an isolated occurrence, taken as a whole, plaintiff has clearly alleged a substantial interference with his civil rights. ^{3/} Whether or not any of such allegations can be supported by evidence is, of course, a question not now before us.

II. Discussion

A. Exhaustion

The defendants urge that this complaint be dismissed because of plaintiff's failure to exhaust administrative and/or contractual remedies. They maintain that such remedies are adequate to deal with all the allegations in plaintiff's complaint, including the conspiracy and harassment charges.

The contractual remedies available to plaintiff are contained in an agreement between the Board of Education and the Council of Supervisors and Administrators of the City of New York, Local 1, School Administrators and Supervisory Organizing Committee, AFL-CIO (CSA contract). The pertinent portions of the CSA contract are Article X and XI, the applicable sections of which are set forth in the margin.^{4/} Article X need not long detain us, since it deals only with violations of the CSA contract. While this section may therefore afford relief for some of the individual acts complained of - such as the unauthorized disclosures of plaintiff's personal file - it does not even purport to deal with the type of systematic harassment that is the gravamen of the instant action.

Article XI, on the other hand, at least purports to deal with "harassing conduct" or "acts of intimidation." It sets up an expedited procedure for the resolution of what are called "special complaints." These are defined as Complaints:

"by a supervisor that a person or persons or groups are engaging in a course of harassing conduct, or, in acts of intimidation, which are being directed against him in the course of his employment, and that . . . the District Superintendent of the district in which he is employed . . . has not afforded the supervisor adequate relief against such course of conduct or acts of intimidation."

Such complaints are filed directly with the Chancellor, who before holding a hearing personally, appoints a "Joint" Investigating Committee to look into the matter. If neither the Committee nor the Chancellor can resolve the dispute, the complaint can be submitted for hearing and fact-finding before an arbitrator or "fact-finder". The fact-finder, however, must "limit his findings strictly to the question whether the employee's complaint has been substantiated by the evidence;" and he is specifically denied any of the "powers conferred upon trial examiners pursuant to Section 2590-J 7(f) of the Education Law." 5/ The fact-finder can recommend an appropriate remedy, but the decision whether to apply such remedy is left to the Board of Education.

In addition to the above contractual remedies, there is a state administrative remedy available to the plaintiff. Section 310 of the Education Law, McKinney's Consol. Law of N.Y., c. 16, 1969, permits an appeal to the Commissioner of Education from decisions of the City Board of Education. Thus, this remedy would come into play if plaintiff invoked his contractual grievance and special complaint procedures and thereafter remained unsatisfied with the

Board's final determination.

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Before turning to the merits of the defendants' argument, it would do well briefly to review the law in this Circuit with respect to the exhaustion requirement. Just recently, the Court of Appeals reaffirmed, "albeit with some hesitation," its rule that adequate state administrative remedies be exhausted prior to bringing an action under the Civil Rights statutes. Fuentes v. Roher (2d Cir. 1975) _____ F.2d _____, slip opin. 3807, 3821. Supreme Court cases seeming to cast doubt on this requirement ^{7/} have been interpreted in Eisen v. Eastman (2d Cir. 1969) 421 F.2d 560, cert. denied 400 U.S. 841 and in Blanton v. State University of New York (2d Cir. 1973) 489 F.2d 377, "'as simply condemning a wooden application of the exhaustion doctrine in cases under the Civil Rights Act.'" 489 F.2d at 383, quoting 421 F.2d at 569. See, also Fuentes v. Roher, supra, slip opin. at 3820.

There are, however, important qualifications to the exhaustion rule. One such exception, mentioned in Fuentes v. Roher, comes into play supra, / where the question of the adequacy of the administrative remedy is for all practical purposes coextensive with the merits of plaintiff's constitutional claims. In addition, the Second Circuit does not require exhaustion of state administrative remedies where their pursuit is either futile or inadequate. Plano v. Baker (2d Cir. 1974) 504 F.2d 595. In Plano, for example, the Court explicitly held

that exhaustion would not be required where the remedy afforded was solely under Section 310 of the Education Law - the same administrative procedure invoked here. The court stated that the administrative procedure under that section was inadequate to resolve factual disputes, noting that the regulations governing appeals to the Commissioner make oral argument discretionary and expressly prohibit the taking of testimony. 504 F.2d at 598.

It is thus apparent that - since the instant dispute like the one in Plano is largely factual in nature - if Section 310 were the only remedy available to plaintiff, exhaustion of this administrative remedy would not be required. The defendants, however, argue that if the available contractual remedies are considered in conjunction with Section 310, the defects in the administrative remedy's fact-finding procedure will be cured. They urge that this entire panoply of contractual and administrative remedies, treated as a whole, are adequate to resolve the issues raised in plaintiff's complaint.

We disagree. First, in view of the hesitancy with which this Circuit clings to the exhaustion of administrative remedies doctrine, we find no basis for extending the principle to the type of contractual remedies here involved. Indeed, we feel that the relevant authorities preclude such extension.

Alexander v. Gardner-Denver Company (1974) 415 U.S. 36, although not dealing with the precise issue, is clearly relevant. In that case the question was raised whether an employee's invocation of a grievance procedure provided ⁱⁿ a collective bargaining agreement waived the employee's cause of action under Title VII of the Civil Rights Act of 1964. After a full discussion ^{of} the unsuitability of grievance and arbitral proceedings for the resolution of statutory or constitutional issues, ^{8/} Mr. Justice Powell, writing for a unanimous Court, held that the employee's Title VII rights had not been waived. Moreover, the language of the opinion appears to indicate that had plaintiff not invoked his remedies under the collective bargaining agreement, he would not have been turned away for failure to exhaust contractual remedies. See, Waters v. Wisconsin Steel Works of Int. Harvester Co. (7th Cir. 1974) 502 F.2d 1309, 1316, U.S. App. Pending; Thornton v. East Texas Motor Freight (6th Cir. 1974) 497 F.2d 416, 426; Hardison v. Trans World Airlines (W.D. Mo. 1974) 375 F.Supp. 877, 880. See, also, Rios v. Reynolds Metals Company (5th Cir. 1972) 467 F.2d 54, 57.

It seems to us that Alexander also precludes any requirement that purely contractual remedies be exhausted in civil rights actions brought under sections other than Title VII, such as 42 U.S.C. §1981, §1983, §1985 or §1986. Congress in enacting these civil rights provisions has "long evinced a general intent to accord parallel or

overlapping remedies against discrimination." (Alexander at 47).

Defendants rely on the Second Circuit's decision in Fuentes v. Roher, supra, for the proposition that a plaintiff must exhaust contractual remedies. This reliance, however, is misplaced. While, as a technical matter, the remedies Fuentes was required to exhaust ~~to exhaust contractual remedies~~ had been established by contract, the contract in question specifically embodied the very due process provisions provided by the State Education Law. Thus, the Court of Appeals observed (slip. opin. at 3813):

"Fuentes was thus given by contract the procedural protections afforded tenured teachers and supervisors. These include rights to notice, retained counsel, the opportunity to call and to cross-examine witnesses . . ."

The contract involved in the instant action, on the other hand, makes no reference whatever to the general due process provisions of the Education Law, and, as we have seen, specifically prohibits invocation of Section 2590j-7(f), the section which allows a trial examiner to administer oaths and subpoena witnesses and documents.

The woefully inadequate procedures available to plaintiff in this case demonstrate the wisdom of a rule not requiring the exhaustion of contractual remedies which are totally independent of any state administrative procedure.

As we noted above, the Article X grievance procedure

is irrelevant, dealing, as it does, exclusively with the interpretation and application of the CSA contract. The procedures under Article XI in no way guarantee either accurate fact-finding or the satisfactory resolution of constitutional claims. The preliminary stages of this procedure contain significant infirmities. For example, when a complaint is first filed with the Chancellor - who, it should be reemphasized, is a defendant in this action - he appoints a joint investigating committee which consists of a representative designated by the Chancellor and a representative, not designated by the complainant, but rather by the exclusive collective bargaining representative for supervisory employees. It is clear, however, that the interests of this organization may be inimical to that of plaintiff's. Indeed, plaintiff contends that the CSA in the last School Board election in District No. 1 vigorously supported the slate of candidates put forward by the PUEA and that the CSA in general has been anti-Puerto Rican.

At the hearing before the Chancellor, the next stage in the remedy procedure under Article XI, this "joint" committee reports its findings and although the complainant does have an opportunity to be heard, he is expressly prohibited from having the assistance of an attorney.

Finally, if the joint committee and/or the Chancellor are unable to resolve the dispute, the matter then may be submitted to

arbitration. We have already commented on the various restrictions ~~that the minimum standards of the fact-finding process pursuant to this provision.~~ It is true that these procedural defects are especially significant when one considers the scope and breadth of the constitutional issues, particularly in the First and Fourteenth Amendment areas, that must be resolved in this case. It is clear that such issues properly lie within the expertise of the courts, and not within the special competence of an arbitrator who is more concerned with the law of the shop than the law of the land. See Alexander v. Gardner-Wharfedale Company, 399 U.S. 417, 53 S.Ct. 836. Moreover, whatever guidance, if any, such an arbitrator could give the court on these constitutional issues, would be clearly limited by the inadequate fact-finding procedures available. See Plano v. Baker, *supra*, 504 F.2d 599.

B. Sufficiency of the Pleadings

Certain of the defendants, primarily the UFT defendants, Chancellor Anker, and the individual members of the Board of Education, urge that the complaint be dismissed as to them because of plaintiff's failure to allege specific facts.

After carefully reviewing the complaint, it seems clear that that this motion must be denied. Although it may well be that plaintiff will be unable to prove all - or even any - of his allegations, "a case brought under the Civil Rights Act should not be

dismissed at the pleadings stage unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." Holmes v. New York City Housing Authority (2d Cir. 1968) 398 F.2d 262, 265. See, also, Conley v. Gibson (1957) 355 U.S. 41. In this case, the plaintiff has set forth facts showing intentional and purposeful deprivation of his civil rights, and has alleged with at least some degree of particularity overt acts by the defendants which he claims were reasonably related to the promotion of the claimed conspiracy. Such a showing is sufficient to withstand a motion to dismiss pursuant to Rule 12(b)(6). See Griffin v. Breckenridge (1971) 403 U.S. 88; cf. Powell v. Workmen's Compensation Board of the State of New York (2d Cir. 1964) 327 F.2d 131.

The UFT defendants further maintain that even if plaintiff has stated a sufficient cause of action under 42 U.S.C. §1983, they, as non-official defendants, would not fall within the ambit of the statute. It is, however, well established that private parties, who act in conjunction with state officials, can be liable under 42 U.S.C. §1983, although they themselves are not officials of the state. Adickes v. Kress & Co. (1970) 398 U.S. 144; Shirley v. State National Bank of Connecticut (2d Cir. 1974) 493 F.2d 739, cert. denied _____ U.S. _____ Plaintiff's complaint clearly alleges that the UFT defendants engaged in concerted, interrelated activity with the various governmental

defendants. Thus, plaintiff's action against the UFT defendants under 42 U.S.C. §1983 is properly before the court.

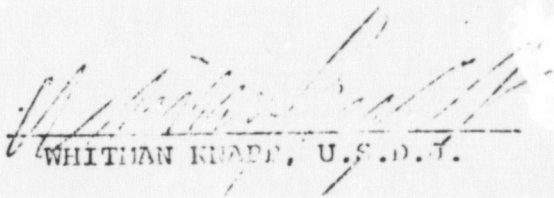
Conclusion

In summary, the defendants' motions to dismiss the complaint are in all respects denied. In view, however, of the importance of this litigation and its close relationship to previous litigation recently before the Court of Appeals, it seems that such Court should have an opportunity, if it wishes, to consider whether we have correctly interpreted its mandate in Fuentes v. Robor, supra. Accordingly, this court certifies pursuant to 28 U.S.C. §1292(b) that the question whether plaintiff should be required to exhaust remedies is a controlling question of law as to which there may be substantial ground for difference of opinion the immediate resolution of which may materially advance the ultimate resolution of this litigation.

SO ORDERED.

Dated: New York, New York

July 31, 1975.


WHITMAN KNAPP, U.S.D.J.

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In their briefs, defendants raise two additional issues which can be treated summarily. First, the defendants suggest that because plaintiff has not been discharged, this case is not "ripe" for adjudication. Dismissal, however, is not the only form of racial discrimination in employment that the Civil Rights statutes can redress. The Civil Rights Acts apply as well to discriminations with respect to the terms and conditions of employment. See, e.g. Johnson v. Railway Express Agency (1975) 43 U.S.L.W. 4623 (May 19, 1975).

Secondly, several of the defendants maintain that they were improperly served with process in this action, and thus the complaint should be dismissed pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure. Since the plaintiff maintains that all parties were properly served, this issue cannot be resolved on the basis of the papers now before the Court.

2/

For a more complete history of the dispute in Community School District No. 1, see Coalition for Education v. Board of Elections of City of New York (S.D.N.Y. 1974) 370 F.Supp. 42, affd. 495 F.2d 1092; and Fuentes v. Boher (2d Cir. 1975) _____ F.2d _____, slip opin. 3807 (May 29, 1975).

3/

See discussion infra, p. 14.

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The provisions read as follows:

"ARTICLE X
GRIEVANCE PROCEDURE

* * *

A. DEFINITION

1. The term "grievance" shall mean:

- a. A complaint by a supervisor covered by this Agreement that there has been as to him a violation, misinterpretation or inequitable application of any of the provisions of this Agreement or of the Memorandum of Understanding between the Board and CSA dated October 1, 1972.
- b. A complaint by CSA involving alleged misapplication or misinterpretation of this Agreement or of the Memorandum of Understanding between the Board and CSA dated October 1, 1972.

B. ADJUSTMENT OF GRIEVANCES

Grievances shall be presented and adjusted in the following manner:

FIRST LEVEL-ALL SUPERVISORS

A supervisor shall within a reasonable time following the act or condition on which his complaint is based discuss the matter with his immediate supervisor in an effort to resolve the problem informally as promptly as possible. It is understood that, if the complaint is resolved informally, no record of the procedures at this level shall be made or kept without the written consent of the aggrieved supervisor.

SECOND LEVEL - PRINCIPALS

Where the grievant's immediate supervisor is a district or assistant superintendent, the written grievance shall be filed directly with the Chancellor within 30 days of the initial informal discussion with the grievant's immediate supervisor. Within ten (10) school days following receipt of the grievance a conference shall be called by the Chancellor or his designee with a view to arriving at a mutually satisfactory resolution of the complaint. Such conference shall be called on not less than two (2) school days' written notice to the grievant, his immediate supervisor and CSA. The grievant shall be entitled to representation at the conference by CSA or by a supervisor of his choice in the New York City school system. Where the grievant is not represented by CSA, CSA shall be permitted to attend the conference and to present its views. If no mutually satisfactory resolution has been reached at this conference, within twenty (20) school days following the conference, the Chancellor shall communicate his written decision to the grievant and his representative, his immediate supervisor and to CSA.

GRIEVANCES INITIATED BY CSA

CSA may initiate a grievance as defined in paragraph A 1 b above at the level of a district superintendent, an assistant superintendent or the Chancellor as may be appropriate.

C. ARBITRATION

A grievance which has not been resolved at the level of the Chancellor may be submitted to an arbitrator.

A grievance may not be submitted to an arbitrator unless a decision has been rendered by the Chancellor under the grievance procedure, except in cases where, upon expiration of the twenty-day time limit for decision, the aggrieved supervisor or CSA filed notice with the Chancellor of intention to submit the grievance to arbitration and no decision was issued by the Chancellor within twenty school days after receipt of such notice. The supervisor

may proceed personally or through CSA or any other representative of his choice. Where the supervisor is not represented by CSA, CSA shall be given timely notice of the submission to arbitration and CSA shall be permitted to submit its views to the arbitrator.

The proceeding may be initiated by filing with the Board and the American Arbitration Association a notice of arbitration. The notice shall be filed within ten school days after receipt of the decision of the Chancellor or, where no decision has been issued in the circumstance described above, within three days following the expiration of the twenty-day period provided above. The notice shall include a brief statement setting forth precisely the issue to be decided by the arbitrator and the specific provision of the agreement involved.

The American Arbitration Association shall appoint one of a panel of three arbitrators to be designated by mutual agreement of the parties, to serve in rotation for any case or cases submitted.

The voluntary labor arbitration rules of the American Arbitration Association shall apply to the proceeding insofar as they relate to the selection of the arbitrator, the hearings and fees and expenses.

The arbitrator shall issue his decision not later than 30 days from the date of the closing of the hearings or, if oral hearings have been waived, then from the date of transmitting the final statements and proofs to the arbitrator. The decision shall be in writing and shall set forth the arbitrator's opinion and conclusions on the issues submitted. The arbitrator shall limit his decision strictly to the application and interpretation of the provisions of this agreement and he shall be without power or authority to make any decision:

1. Contrary to, or inconsistent with, or modifying or varying in any way, the terms of this agreement or of applicable law or rules or regulations having the force and effect of law;
2. Involving Board discretion or Board policy under the provisions of this agreement, under Board by-laws or under applicable law, except that he may decide in a particular case that Board policy was disregarded or that its attempted application under any term of this agreement was so discriminatory, arbitrary, or capricious as to constitute an abuse of discretion.
3. Limiting or interfering in any way with the powers, duties, and responsibilities of the Board under its by-laws, applicable law and rules and regulations having the force and effect of the law.

The decision of the arbitrator shall be in writing and, if made in accordance with his jurisdiction and authority under this agreement,

shall be advisory only and not binding upon the Board.

The Board shall make a final determination within 30 days after receipt of the arbitrator's decision.

The arbitrator's fee will be shared equally by the parties to the dispute.

* * *

ARTICLE XI SPECIAL COMPLAINTS

It is the declared objective of the parties to encourage the prompt and informal resolution of special complaints not covered by the Grievance Procedure and to dispose of such complaints as they arise and to provide recourse to orderly procedures for their adjustment.

A. DEFINITION

A "special complaint" is a complaint by a supervisor that a person or persons or group is engaging in a course of harassing conduct, or in acts of intimidation, which are being directed against him in the course of his employment, and that the principal of the school in which he is assigned or the District Superintendent of the district in which he is employed or the appropriate Assistant Superintendent at the high school level has not afforded the supervisor adequate relief against such course of conduct or acts of intimidation.

B. FILING AND PRIORITY HANDLING

A special complaint shall be promptly filed with the Chancellor by the affected employee or, upon his request, by CSA. Such complaint shall receive expedited handling pursuant to this Article.

C. JOINT INVESTIGATION AND INFORMAL RESOLUTION

Within twenty-four (24) hours after the special complaint is filed with the Chancellor, a "Joint" Investigating Committee consisting of one representative designated by the Chancellor and one representative designated by CSA shall investigate the complaint at the school or district level to ascertain the facts and bring about a prompt resolution of the problem without resort to formal procedures. In the course of its investigation, the Joint Committee shall confer with the principal of the school, the Chancellor and other persons involved in the controversy.

D. ADMINISTRATIVE HEARING AND CONTINUED ATTEMPT AT INFORMAL RESOLUTION

If the complaint is not resolved by the Joint Investigating Committee to the satisfaction of the affected supervisor he may

request a hearing before the Chancellor. Within forty-eight (48) hours after receipt of the request for hearing, the Chancellor, or a representative designated by him, shall hold a hearing at which the Joint Investigating Committee shall report its findings and all persons involved, including the affected supervisor, shall have an opportunity to be heard. The complaining supervisor may represent himself at the hearing or, upon request, may be represented by CSA or by a person of his own choosing other than an attorney.

At the hearing the Chancellor, or his representative shall make every effort to resolve the complaint informally and all persons involved shall cooperate toward this end.

E. DECISION OF THE CHANCELLOR

Within seventy-two (72) hours following the close of the hearing, the Chancellor shall notify all parties of his decision and the manner in which it shall be effectuated.

F. FACT FINDING AND RECOMMENDATIONS

If the complaint is not resolved by the Chancellor, the affected supervisor, or CSA upon his request, may submit it for hearing and fact finding before an arbitrator selected in accordance with Article X C of this Agreement. The submission shall be made within ten (10) school days after the issuance of the Chancellor's decision.

The voluntary labor rules of the American Arbitration Association shall apply to the proceeding in so far as they relate to the hearing, fees and expenses.

The fact-finder shall render findings not later than seventy-two (72) hours from the date of the close of the hearings or, if oral hearings have been waived then from the date of transmitting the final statements and proofs to the fact-finder. The findings of fact shall be in writing. The fact-finder shall limit his findings strictly to the question whether the employee's complaint has been substantiated by the evidence. If the fact-finder finds the complaint to be substantiated and unremedied, he shall recommend an appropriate remedy.

The fact-finder shall not interpret or apply the provisions of this Agreement or exercise any of the other functions specified in Article X of this agreement, nor shall he exercise any of the powers conferred upon trial examiners pursuant to Section 2590-j 7 (f) of the Education Law.

BOARD CONSIDERATION

Within ten (10) days after receipt of the fact finder's report, the Board shall make a determination."

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§2590-j 7 (f):

"(f) The community board on receipt of a notice of charges by the community superintendent against any employee shall appoint one or more trial examiners. The assigned trial examiner or examiners shall be selected from a panel of competent persons maintained by the chancellor. The trial examiner shall administer the oath to all appropriate witnesses. A trial examiner shall have the power to subpoena witnesses, papers and records. The provisions of the civil practice law and rules in relation to enforcing obedience to a subpoena lawfully issued by a judge, arbitrator, referee or other person in a matter not arising in an action in a court of record apply to a subpoena issued by a trial examiner as authorized by this subdivision. The report of any such trial examiner shall be subject to final action by the community board. The community board may reject, confirm or modify the report of the trial examiner or examiners. A vote of the majority of all members of the board shall be necessary for a finding of guilt and to impose a penalty or punishment. The employee may appeal to the city board from any adverse determination or penalty imposed by such community board. The city board after reviewing the record in the case, shall have the power to make a final determination in the case subject to any provision for arbitration that may exist in agreements between the city board and the organization representing such employee, not inconsistent with applicable law. Nothing contained in this section shall preclude an aggrieved employee from seeking a review of such final determination by the commissioner or the courts as prescribed by law.

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Section 310 of the Education Law:

"Appeals or petitions to commissioner of education and other proceedings

Any person conceiving himself aggrieved may appeal or petition to the commissioner of education who is hereby authorized and required to examine and decide the same; and the commissioner of education may also institute such proceedings as are authorized under this article and his decision in such appeals, petitions or proceedings shall be final and conclusive, and not subject to question or review in any place or court whatever.

Such appeal or petition may be made in consequence of any action:

1. By any school district meeting.
2. By any district superintendent and other officers, in forming or altering, or refusing to form or alter, any school district, or in refusing to apportion any school moneys to any such district or part of a district.
3. By a county treasurer or other distributing agent in refusing to pay any such moneys to any such district.
4. By the trustees of any district in paying or refusing to pay any teacher, or in refusing to admit any scholar gratuitously into any school or on any other matter upon which they may or do officialy act.
5. By any trustees of any school library concerning such library, or the books therein, or the use of such books.
6. By any district meeting in relation to the library or any other matter pertaining to the affairs of the district.
7. By any other official act or decision of any officer, school authorities, or meetings concerning any other matter under this chapter, or any other act pertaining to common schools."

7/

McNeese v. Board of Education (1963) 373 U.S. 668; Damico v. California (1967) 389 U.S. 416; King v. Smith (1968) 392 U.S. 309, 312 n.4; Houghton v. Shafer (1968) 392 U.S. 639; Wilwording v. Swenson (1971) 404 U.S. 249; Carter v. Stanton (1972) 405 U.S. 669; Gibson v. Berryhill (1973) 411 U.S. 564.

See also Steffel v. Thompson (1974) 415 U.S. 452, 472-73.

8/

415 U.S. at 56-58:

"Arbitral procedures, while well suited to the resolution of contractual disputes, make arbitration a comparatively inappropriate forum for the final resolution of rights created by Title VII. This conclusion rests first on the special role of the arbitrator, whose task is to effectuate the intent of the parties rather than the requirements of enacted legislation. Where the collective-bargaining agreement conflicts with Title VII, the arbitration must follow the agreement. To be sure, the tension between contractual and statutory objectives may be mitigated where a collective-bargaining agreement contains provisions facially similar to those of Title VII. But other facts may still render arbitral processes comparatively inferior to judicial processes in the protection of Title VII rights. Among these is the fact that the

specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land. . . . Parties usually choose an arbitrator because they trust his knowledge and judgment concerning the demands and norms of industrial relations. On the other hand, the resolution of statutory or constitutional issues is a primary responsibility of courts, and judicial construction has proved especially necessary with respect to Title VII, whose broad language frequently can be given meaning only by reference to public law concepts.

Moreover, the factfinding process in arbitration usually is not equivalent to judicial factfinding. The record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable. . . . And as this Court has recognized, '[a]rbitrators have no obligation to the court to give their reasons for an award.' United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S., at 598. Indeed, it is the informality of arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution. This same characteristic, however, makes arbitration a less appropriate forum for final resolution of Title VII issues than the federal courts." (citations and footnotes omitted)

9/

See plaintiff's Affidavit in opposition to motion to dismiss.

Order of United States Court of Appeals
Dated September 2, 1975
UNITED STATES COURT OF APPEALS

162

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the ^{second} day of September, one thousand nine hundred and seventy-five.

Raul Gonzalez,

Plaintiff-Appellee,

v.

Albert Sharker, et. al.,

Defendants-Appellants.

It is hereby ordered that the motion made herein by counsel for the

~~xxxxxxx~~ ~~xxxxxxx~~ Mersereau, Surie, Roher, Price, Goodman, et. al. ~~xxxxxxx~~
~~xxxxxxx~~ ~~xxxxxxx~~ petitioners / ~~xxxxxxx~~ respondents

by notice of motion dated ~~xxxxxxx~~ August 14, 1975 for leave to appeal pursuant to 28 USC §1292(b) and for a stay pending determination of the petition and any subsequent appeal

be and it hereby is granted

~~denied~~

GRANTED

GRANTED

It is further ordered that

IRVING R. KAUFMAN, Chief Judge.

EDWARD LUMBARD

ROBERT P. ANDERSON, Circuit Judges

Second Circuit



At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the SECOND day of SEPTEMBER, one thousand nine hundred and SEVENTY-FIVE.

Raul Gonzalez,

Plaintiff-Appellee,

v.

Albert Shanker, et. al.,

Defendants-Appellants.

It is hereby ordered that the motion made herein by counsel for the

~~XXXXXXXX~~ Corosella, Braverman, Spivack, Shanker, et al.
~~XXXXXXXX~~ petitioners / ~~XXXXXXXX~~

~~XXXXXXXX~~ motion dated August 15, 1975 for leave to appeal pursuant to 28 USC §1292 (b) and for a stay pending determination of the petition and any subsequent appeal

be and it hereby is granted

~~GRANTED~~ GRANTED

GRANTED

~~XXXXXXXXXXXXXXXXXXXX~~ It is further ordered that

IRVING R. KAUFMAN, Chief Judge.

EDWARD L. LOHR

ROBERT D. ANDERSON
Circuit Judges

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

Carlos M Rodriguez being duly sworn, says that on the 30 day
of Oct 19 75, he served the annexed Joint Appendix upon
James R Sanders Esq., the attorney for the Defendant Appellant
herein by depositing ^{3 copies} a copy of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and
Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the
United States in said city directed to the said attorney at No. 260 1 Ark Ave South in the
Borough of Mun, City of New York, being the address within the State theretofore designated by
him for that purpose.

Sworn to before me, this

30 day of Oct 19 75 Carlos M Rodriguez
City of New York, No. 22762
Certificate Filed in County of New York
Commission Expires March 1, 19 77

SHARON L. FEIGENBAUM

Commissioner of Deeds

City of New York, No. 22762

Certificate Filed in County of New York

Commission Expires March 1, 19 77

Sharon L. Feigel

AFFIDAVIT OF SERVICE ON ATTORNEY BY MAIL

State of New York, County of New York, ss.:

Carlos M Rodriguez being duly sworn, says that on the 30 day
of Oct 19 75, he served the annexed Joint Appendix upon
Layton & Shearman Esq., the attorney for the Plaintiff Appellant
herein by depositing ^{3 copies} ~~a copy~~ of the same, inclosed in a postpaid wrapper in a post office box situated at Chambers and
Centre Streets, in the Borough of Manhattan, City of New York, regularly maintained by the government of the
United States in said city directed to the said attorney at No. 50 Rockefeller Plaza in the
Borough of Mun, City of New York, being the address within the State theretofore designated by
him for that purpose.

Sworn to before me, this

30 day of Oct 19 75

SHARON L. FEIGENBAUM
Commissioner of Deeds
City of New York No. 2-2762
Certificate Filed in New York County
Commission Expires March 1, 1977

Sharon L. Feig



